



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 of the Housing (Scotland) Act 1988 (“the Act”) and First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/EV/20/0813

Re: Property at The Flat, 12 Victoria Street, Newton Stewart, DG8 6BT (“the Property”)

Parties:

Mr Maurice Halliday and Mrs Anne Graham Halliday, 15 St Mary Street, Kirkcudbright, DG6 4AA (“the Applicant”) per their agents, Gillespie Gifford Brown LLP, solicitors, 27 Cuthbert Street, Kirkcudbright, DG6 4DJ (“the Applicant’s Agents”)

Mr Nicholas Finningham, The Flat, 12 Victoria Street, Newton Stewart, DG8 6BT (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Possession be granted.

1. By application received on 9 March 2020 (“the Application”), the Applicant’s Agents on behalf of the Applicant made an application to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Chamber”) for a possession order in terms of Section 18(1) of the Act. The Application comprised an application form, copy short assured tenancy agreement showing a monthly rent of £450.00, copy notice to quit dated 20 January 2020 giving notice that the removal date is 1 March 2020, being an ish date, copy notice in terms of Section 19 of the Act commonly known as “AT6” citing Grounds 11 and 12 of Schedule 5 to the Act and

detailing a record of shortfall and arrears of rent amounting to £1,850.00 and copy notice to Dumfries and Galloway Council, being the relevant local authority, in terms of Section 11 of the Homelessness (Scotland) Act 2003.

2. On 19 March 2020, a legal member of the Chamber with delegated powers of the Chamber President accepted the Application and a Case Management Discussion (“CMD”) was fixed for 17 August 2020 at 10.00 by telephone conference call. The Application was intimated to the Respondent by Sheriff Officer service. The CMD was intimated to both Parties.
3. The CMD took place on 17 August 2020 at 10.00. The Applicant did not take part and was represented by Mrs. Knight of the Applicant’s Agents. The Respondent did not take part. The Tribunal explained the role of the Tribunal and its powers within the Scottish Courts Administration. The Tribunal explained the purpose of the CMD in terms of Rule 17 of the Rules.

Summary of Discussion

4. The Tribunal asked the Applicant’s Agent to confirm the order sought and the current position regarding arrears of rent. Applicant’s Agent confirmed that an order for possession is sought and that no rent has been paid this calendar year.
5. With regard to the discretionary aspect of the order sought, the Tribunal asked the Applicant’s Agent if she had information in respect of the Respondent’s personal circumstances. The Applicant’s Agent, advised, that as far as she understood, the Respondent is a single man with no dependants, that he is self-employed and that he has not made contact with the Applicant for some time. The Applicant seeks possession of the Property to market for sale.

Findings of the Tribunal.

6. From the Application and the CMD, the Tribunal found the following facts to be established: -
 - i) There is a short tenancy agreement between the Parties;
 - ii) The monthly rent is £450.00;
 - iii) A competent notice to quit and AT6 were intimated to the Respondent by or on behalf of the Applicant;

- iv) Notice to Dumfries and Galloway Council, being the relevant local authority, in terms of Section 11 of the Homelessness (Scotland) Act 2003 has been given;
- v) There is a history of persistent late and underpayment of rent by the Respondent to the Applicant and there are arrears of rent;
- vi) No rent has been paid by the Respondent during this calendar year;

Decision of the Tribunal and Reasons for the Decision.

7. The Tribunal had regard to the statutory process which a landlord must follow to recover possession of a property and determined that the Applicant had complied with these requirements.
8. The Tribunal then had regard to the question of reasonableness, and, took the view that as the Respondent has persistently paid rent late, has not paid rent for this calendar year without excuse or reason and has no dependants who rely on him and who would be prejudiced by the order being granted, it is reasonable to grant the order.
9. The Tribunal then had regard to Rule 17(4) of the Rules which states that the Tribunal “may do anything at a case management discussionincluding making a decision” and so proceeded to make an order for possession to come into effect thirty days from the date hereof, being 17 September 2020.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Karen Moore

17th August 2020

Legal Member/Chair

Date

