



**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**

Chamber Ref: FTS/HPC/EV/21/1083

Re: Property at GF1, Ascot, Gracefield, Musselburgh, EH21 6LL (“the Property”)

Parties:

**Mr Alan Weare, Mr Christopher Weare, Wellingtonia, Carberry Gardens,
Musselburgh, EH21 8PY (“the Applicant”)**

**Mr Paul Purdey, formerly residing at GF1, Ascot, Gracefield, Musselburgh,
EH21 6LL and whose current whereabouts are unknown (“the Respondent”)**

Tribunal Members:

Fiona Watson (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that order is granted against the Respondent for
possession of the Property under section 18 of the Housing (Scotland) Act
1988.**

- Background
- 1. An application dated 7 May 2021 was submitted to the Tribunal under Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a repossession order against the Respondent upon termination of a short assured tenancy agreement.
- The Case Management Discussion
- 2. A Case Management Discussion (“CMD”) took place on 19 August 2021 by tele-conference. The Second-Named Applicant, Christopher Weare was personally present and the Applicants were represented by Miss Morrison, TC Young LLP. There was no appearance by or on behalf of the Respondent. The application

had been intimated on the Respondent by Website Advertisement from 14 July 2021 until 19 August 2021, following a failed attempt at service by Sheriff Officers who had found the Property to be unoccupied. The Tribunal was accordingly satisfied that service had been effected in terms of the Rules and that the CMD could proceed in the Respondent's absence.

3. Miss Morrison moved for the Order to be granted as sought in the application. It was submitted that the tenancy agreement had commenced on 13 May 2019. The tenancy agreement lodged with the application had no start date nor end date stated within it, and had a footnote on the document stating that it commenced on 1 May 2019. It was submitted that this was an error. The Form AT5 had been signed on 13 May 2009 and Mr Weare advised the Tribunal that having discussed matters with his father, the recollection was that the AT5 and lease were both signed on 13 May 2009, this being the start date, and that the footnote must be an error.
4. The original agreed rent under the agreement was £480 per month and it was submitted that this was increased to £520 per month on 26 June 2018. No evidence of intimation of rent increase was lodged with the application, nor could such proof of intimation be found. Removing the supposed rent increase, and calculating the arrears on the basis of a monthly rent of £480, the arrears outstanding at the date of the CMD were £3,785.71. A Form AT6 and Notice to Quit were served by Recorded Delivery on 6 May 2020. The AT6 was served on the basis of Grounds 8, 11 and 12 of Schedule 5 to the said 1988 Act. There were at least 3 months arrears outstanding at the date of service of the AT6, and still at least 3 months arrears due at the date of the CMD.
5. It was submitted that the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 had been complied with. It was noted by the Tribunal that the Pre-Action Requirements letters lodged with the application dated 2 February 2021 and 14 April 2021 did not show the same level of rent arrears balance as was stated on the rent statement lodged with the application. They both stated a balance lower than that on the rent statement. Miss Morrison submitted that this was an error due to the rent statement which had originally been provided to the applicants' agents from their new letting agent not including the arrears balance prior to the letting agents' commencement of management the Property, and only running from the date they took over management. Once this was noticed, a further letter was issued to the Respondent on 4 August 2021 setting out the correct arrears balance due.

- Findings in Fact

6. The Tribunal made the following findings in fact:
 - (i) The parties entered into an Assured Tenancy Agreement ("the Agreement") which commenced 13 May 2009;
 - (ii) A Notice to Quit and Form AT6 under section 19 of the 1988 Act were served on the Respondent on 6 May 2020 by recorded delivery post;

- (iii) The Form AT6 under section 19 of the 1988 Act relied on grounds 8,11 and 12 under Schedule 5 to the 1988 Act;
- (iv) The Form AT6 under section 19 of the 1988 Act advised that proceedings would not be raised before 8 November 2020;
- (v) The Respondent no longer appeared to reside in the Property.
- (vi) The Respondent was in arrears of rent amounting to £3,785.71 at the date of the CMD.

- Reasons for Decision

7. Section 18 of the 1988 Act (as amended) states as follows:

18 (1) The First-tier Tribunal shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act.

(2) The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.

(3B) Subsection (3C) applies where the First-tier Tribunal is satisfied—

(a) that Ground 8 in schedule 5 is established, and

(b) that all or part of the rent in respect of which the tenant is in arrears as mentioned in that Ground relates to the period during which paragraph 4 of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020 is in force.

(3C) Where this subsection applies, in considering for the purposes of subsection (4) (as applied in accordance with the modification made by paragraph 3(2)(b) of schedule 1 of the Coronavirus (Scotland) Act 2020) whether it is reasonable to make an order for possession against the tenant, the First-tier Tribunal is to consider the extent to which the landlord has complied with pre-action requirements before raising the proceedings for possession.

(4) If the First-tier Tribunal is satisfied that any of the grounds in Part I or Part II of Schedule 5 to this Act is established, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

(4A) In considering for the purposes of subsection (4) above whether it is reasonable to make an order for possession on Ground 8 in Part I of Schedule 5 to this Act or on Ground 11 or 12 in Part II of Schedule 5 to this Act, the First-tier Tribunal shall have regard, in particular, to the extent to which any delay or failure to pay rent taken into account by the Tribunal in determining that the Ground is established is or was a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit.

(5) Part III of Schedule 5 to this Act shall have effect for supplementing Ground 9 in that Schedule and Part IV of that Schedule shall have effect in relation to notices given as mentioned in Grounds 1 to 5 of that Schedule.

(6) The First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless—

(a) the ground for possession is Ground 2 or Ground 8 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9, Ground 10, Ground 15 or Ground 17; and

(b) the terms of the tenancy make provision for it to be brought to an end on the ground in question.

(6A) Nothing in subsection (6) above affects the First-tier Tribunal's power to make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, where the ground for possession is Ground 15 in Part II of Schedule 5 to this Act.

(7) Subject to the preceding provisions of this section, the First-tier Tribunal may make an order for possession of a house on grounds relating to a contractual tenancy which has been terminated; and where an order is made in such circumstances, any statutory assured tenancy which has arisen on that termination shall, without any notice, end on the day on which the order takes effect.

(8) In subsections (3A) and (4A) above—

(a) "relevant housing benefit" means—

(i) any rent allowance or rent rebate to which the tenant was entitled in respect of the rent under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971); or

(ii) any payment on account of any such entitlement awarded under Regulation 91 of those Regulations;

(aa) "relevant universal credit" means universal credit to which the tenant was entitled which includes an amount under section 11 of the Welfare Reform Act 2012 in respect of the rent;

(b) references to delay or failure in the payment of relevant housing benefit or relevant universal credit do not include such delay or failure so far as referable to any act or omission of the tenant.

8. Ground 8 of Schedule 5 to the 1988 Act states as follows:

Both at the date of the service of the notice under section 19 of this Act relating to the proceedings for possession and at the date of the hearing or the date of the case management discussion, whichever is the earlier, at least three months rent lawfully due from the tenant is in arrears.

9. Ground 11 of Schedule 5 to the 1988 Act states as follows:

Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.

10. Ground 12 of Schedule 5 to the 1988 Act states as follows:

Some rent lawfully due from the tenant—

*(a) is unpaid on the date on which the proceedings for possession are begun; and
(b) except where subsection (1)(b) of section 19 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.*

11. The Tribunal was satisfied that the grounds relied upon in the Form AT6 had been met. At the date of service of the AT6 on the Respondent, there were rent arrears of at least three months. The monthly rent was £480. At the date of the Case Management Discussion, the arrears stood at £3,785.71. Accordingly, both at the date of service of the AT6 and at the date the case called before the Tribunal, there were at least three months of arrears due. Further, in terms of Ground 11 the Tribunal was satisfied that the Respondent had persistently delayed paying rent which has become lawfully due. There were arrears of rent due and accordingly Ground 12 had been met.

12. The Tribunal noted that the Pre-Action Requirement letters did not state the correct level of rent arrears due, prior to raising the proceedings. However, they did indicate that there were sizable arrears due, and did signpost the Respondent to appropriate advice agencies. Taking into account the fact that it was evident that the Respondent was no longer residing in the Property, the Tribunal was satisfied that it was reasonable to grant the Order under the circumstances.

- Decision

13. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for possession of the Property under section 18 of the Housing (Scotland) Act 1988.

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.

Legal Member/Chair

Date: 19 August 2021