



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/20/1106

Re: Property at 1 John Knox Court, Mounthooly, Aberdeen, AB24 3LF (“the Property”)

Parties:

Drum Investments Ltd, 12 Rubislaw Terrace Lane, Aberdeen, AB10 1XF (“the Applicant”)

Miss Jill Golightly, 1 John Knox Court, Mounthooly, Aberdeen, AB24 3LF (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and made an Order for Possession of the Property.

Background

By application, received by the Tribunal on 20 April 2020, the Applicant sought an Order for Possession of the Property under Section 18 of the Housing (Scotland) Act 1988 (“the Act”). The Ground relied on was Ground 8 of Schedule 5 to the Act, namely that at least three months’ rent lawfully due by the Respondent was in arrears.

The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Parties, commencing on 1 April 2015 and, if not brought to an end by either Party on 1 October 2015, continuing on a monthly basis thereafter until terminated by either Party giving no less than one month’s notice to the other Party. The rent payable was £550 per month. The Applicant also provided copies of a Form AT6 Notice dated 13 January 2020, advising the Respondent that the Applicant intended to apply to the Tribunal for an Order for Possession under Ground 8 of Schedule 5 to the Act and that proceedings would not be raised before 15 March

2020, and a Notice to Quit requiring the Respondent to remove from the Property by 15 March 2020. The Notice to Quit was undated, but the Applicant provided a proof of posting certificate dated 13 January 2020, which, the Applicant stated, was in relation to both the Form AT6 and the Notice to Quit. The Notice to Quit was, however, not valid, as it did not terminate the tenancy on an ish date, which would have been the 1st of the month, but ultimately it was not relied on by the Applicant.

Subsequent to the application, the Applicant provided the Tribunal with a Rent Statement, showing rent arrears of £3,300 at the date of service of the Section 19 Notice of £3,300 and £5,625 at 16 July 2020.

On 9 October 2020, the Tribunal advised the Parties of the date and time of a Case Management Discussion and the Respondent was invited to make written representations by 30 October 2020. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held by way of a telephone conference call on the afternoon of 12 November 2020. The Applicant was represented by Ms Anne-Marie Morrice. The Respondent also participated in the conference call and told the Tribunal that she had been unemployed since being made redundant in May 2019. She was now in receipt of Universal Credit and the housing element of that was being paid directly to the Applicant. The Applicant's representative confirmed that this was the case but added that the amount being received was less than the monthly rent, so the arrears were continuing to increase and now exceeded the amount shown in the Rent Statement of 16 July 2020. The Respondent said that she had been making payments, but, due to her having put a wrong number on the payment instruction to her bank, they had mistakenly gone to the wrong bank account and, when she discovered the problem and reported this to her bank, the bank had contacted the recipient, who had refused to return the money. The Respondent accepted that this had not been in any way the fault of the Applicant and that the Applicant was entitled to seek the Order for Possession. The Applicant's representative said that the Respondent had failed over a long period to respond to letters, emails and text messages regarding her rent arrears and the Applicant felt there was no alternative but to request the Order for Possession.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

Section 18 of the Act states that the Tribunal shall not make an Order for Possession of a house let on an assured tenancy, which is not a statutory assured tenancy, except on one or more of the Grounds set out in Schedule 5 to the Act and that, if the Tribunal is satisfied that any of the Grounds in Part I of Schedule 5 to the Act is established then, subject to the additional requirement in relation to, *inter alia*, Ground 8, that the terms of the tenancy make provision for it to be brought to an end on the Ground in question, the Tribunal shall make an Order for Possession. In addition, under Section 19 of the Act, the Tribunal cannot entertain proceedings for possession unless the landlord has served on the tenant a Notice of Proceedings for Possession, advising the tenant that the landlord intends to raise proceedings on

one or more of the Schedule 5 Grounds specified in the Notice and that those proceedings will not be raised earlier than the expiry of (in the case of Ground 8) two weeks from the date of service of the Notice.

Ground 8 is one of the Grounds in Part I of Schedule 5 to the Act and applies where, both at the date of service of the Notice under Section 19 of the Act relating to the proceedings for possession and at the date of the Hearing, at least three months' rent lawfully due from the tenant is in arrears.

The Tribunal was satisfied that the tenancy was not a statutory assured tenancy, as a valid Notice to Quit had not been served. The terms of the Short Assured Tenancy Agreement, however, included a provision that it could be brought to an end by the landlord giving the tenant the required Notice under Section 19 of the Act and subsequently obtaining an Order for Possession on one or more of the Grounds set out in Schedule 5 to the Act. The Tribunal was satisfied that the Notice required under Section 19 of the Act had been validly given.

The Tribunal was satisfied that, both at the date of service of the Section 19 Notice and at the date of the Case Management Discussion, at least three months' rent lawfully due from the Respondent was in arrears.

The Tribunal concluded that all the requirements of Section 18 the Act had been met and, accordingly, the Tribunal was bound to make an Order for Possession of the Property.

The case was not affected by the provisions of the Coronavirus (Scotland) Act 2020, as the Section 19 Notice on which it relied had been served prior to 7 April 2020.

Decision

The Tribunal determined that the application should be decided without a Hearing and made an Order for Possession of the Property.

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.

George Clark

Legal Member/Chair

12 November 2020
Date