



**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/19/3464

**Re: Property at Flat 3/1, 17 Prospect Hill Grove, Glasgow, G42 9LG (“the
Property”)**

Parties:

**Places for People Homes Limited, c/o Touchstone, 2 Crescent Office Park,
Clarks Way, Bath, BA2 2AF (“the Applicant”)**

**Mr Paul Kelly, Flat 3/1, 17 Prospect Hill Grove, Glasgow, G42 9LG (“the
Respondent”)**

Tribunal Members:

Sarah O'Neill (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 recovery of possession should be
granted in favour of the applicant.**

Background

1. An application was received on 29 October 2019 under rule 65 of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”) seeking recovery of possession of the property under Grounds 8, 11 and 12 as set out in schedule 5 of the Housing (Scotland) Act 1988 (‘the 1988 Act’).
2. The application included: the tenancy agreement; a copy of form AT5; a copy of the notice required under section 19 of the 1988 Act (‘the AT6’); a copy of a Notice to Quit; a copy of a notice under section 33 of the 1988 Act (‘the section 33 notice’); and proof of service by sheriff officer of the various notices. It also included a copy of the notice by the landlord given to the local authority under

section 11 of the Homelessness (Scotland) Act 2003. It also included a rent statement, showing the rent due up to the date of the application to be £2,512.

3. A previous case management discussion (CMD) had been held on 10 January 2020. At that CMD, the tribunal had noted that the sheriff officer's certificate of service relating to the notice of that CMD, together with the application papers and guidance notes, referred to the address whether the papers were deposited as *'Flat 3/1, 17 Prospecthill Grove Glasgow G42 9LG*. This differed from the address in the application and the tenancy agreement, and all of the other paperwork, which was *Flat 3/1 17 Prospecthill Way, Glasgow G42 9LG*.
4. At that CMD, Ms Nicola Caldwell appearing on behalf of the applicant advised the tribunal that the correct property address was in fact Flat 3/1, 17 Prospecthill Way, Glasgow but that the postcode was G42 9LJ and not G42 9LG. At her request, the tribunal allowed an amendment to the application to state that address. The tribunal adjourned consideration of the application to enable the papers to be served again on the respondent. The tribunal issued a direction on 15 January 2020, noting that the sheriff officer had provided further information in a report dated 4 December 2019, and directed the applicant to make inquiries and contact the tribunal by 23 January 2020 to clarify the property address and the address of the respondent and if necessary to further amend the application to reflect this.
5. An email was received from the applicant's solicitor, Mr Kenneth Caldwell of Patten and Prentice solicitors on 23 January 2020. The email was copied to the respondent. In the email, Mr Caldwell explained that after further enquiries, it had been established that the applicant owns 14 flats within a new build development comprising of two properties known as 17 Prospecthill Grove and 5 Prospecthill Way, Glasgow. He provided copies of a sales brochure produced by the applicant in support of this. He advised that the tenancy agreement erroneously described the property as 17 Prospecthill Way but correctly specified the postcode as G42 9LG. He stated that he had been advised that the building at number 17 had a street sign marked 'Prospecthill Way'. He stated that the applicant now sought to amend the application to correctly design the property occupied by the respondent as 3/1, 17 Prospecthill Grove, Glasgow G42 9LG.
6. The tribunal chairperson agreed to amend the application to state the property address as 3/1, 17 Prospecthill Grove, Glasgow G42 9LG.
7. It then became apparent that the notice of the new CMD arranged for 19 February 2020 had been sent to the respondent by recorded delivery and first class post at the address which the application had previously been amended to include, i.e. Flat 3/1, 17 Prospecthill Way, Glasgow G42 9LJ. The tribunal administration therefore sent a new CMD notification letter to the respondent by recorded delivery and first class post at the newly amended address of 3/1, 17 Prospecthill Grove, Glasgow G42 9LG.

The Case Management Discussion

8. A case management discussion (CMD) was held on 19 February 2020 at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The applicant was represented by Ms Nicola Caldwell of TC Young Solicitors, on behalf of Patten and Prentice solicitors. The respondent was not present or represented at the CMD. The tribunal delayed the start of the CMD by 10 minutes, in case the respondent had been detained. He did not appear, however, and no telephone calls, messages or emails had been received from him.
9. The tribunal considered whether the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a CMD had been duly complied with. The tribunal administration confirmed that the recorded delivery letter containing the CMD notification had not been signed for by the respondent. There was no evidence, however, that the letter sent by first class post had not been received by the respondent.
10. The tribunal was satisfied that the application papers had in fact been validly served by the sheriff officer on 4 December 2019, prior to the first CMD. The sheriff officer had provided a report on that date, stating that on attending at Prospecthill Way, it had been discovered that the only block of flats at that address was number 5. On making further enquiries, it had become apparent that the postcode given related to 17 Prospecthill Grove, where a neighbour had confirmed that this was the correct address for the respondent.
11. When papers have previously been successfully served by sheriff officer, it is the tribunal's practice to send further letters by recorded delivery and first class post, and to give parties a minimum of 14 days' notice of a CMD.
12. In light of the above information, the tribunal was satisfied that the requirements of rule 17(2) of the 2017 rules had been complied with. The tribunal therefore proceeded with the CMD in the absence of the respondent.

Preliminary issues

13. The tribunal noted that the applicant had served three notices, all dated 10 October 2019, on the respondent on the applicant by sheriff officer on 10 October 2019, namely a section 33 notice, a Notice to Quit and the form AT6. While the date on the form AT6 before which proceedings would not be raised was stated as 25 October 2019, which was prior to the application being made, the two other notices stated that the applicant required possession on 4 January 2020, which was after the date the application was made. Ms Caldwell confirmed that she understood it was the applicant's practice to serve all of the notices, and later decide on which grounds to apply to the tribunal. She confirmed that her instructions were to seek an order in terms of rule 65 of Schedule 1 to the 2017 rules. As the terms of the tenancy made provision for the tenancy to be brought to an end on the grounds on which the order was

sought, there was no requirement for a Notice to Quit as section 18(6) of the 1988 Act applied.

14. The tribunal noted that the sheriff officer's certificate of service dated 10 October 2019 stated that the notices had been served on the respondent at Flat 3/1, Prospecthill Way, Glasgow G42 9LG, which was the address incorrectly stated in the tenancy agreement and in the original application. The tribunal chairperson asked whether the applicant's position in light of this was that the form AT6 had been validly served on the respondent. Ms Caldwell told the tribunal that, while she appreciated the address stated on the certificate of service was incorrect, the applicant's solicitors, Patten and Prentice, had confirmed that the notices had been served at the correct address. She pointed out that the address 17 Prospecthill Way did not exist, but that the correct postcode had been stated. She also pointed to Mr Caldwell's email of 23 January 2020 which stated that that the building at number 17 had a street sign marked 'Prospecthill Way'.
15. The tribunal was satisfied in light of the above that the form AT6 had been served on the respondent at the correct address.

Evidence on behalf of the applicant

16. Ms Caldwell asked the tribunal to grant an order in favour of the applicant against the respondent for recovery of possession of the property on ground 8 as set out in Schedule 5 of the 1988 Act. She referred on behalf of the applicant to the rent statement which had been submitted with the original application, and to an updated statement which had been submitted to the tribunal by the applicant's solicitor on 13 January 2020, which showed the outstanding rent up to and including 31 January 2020 to be £4582. She advised that no further payments had been made by the respondent, and that the outstanding balance was now £5132.
17. The rent statement received on 13 January 2020 showed that no rental payments had been made by the respondent since 4 July 2019.
18. The tribunal chairperson asked whether the respondent had been in receipt of housing benefit/universal credit. Ms Caldwell confirmed that she had not been advised that the respondent was in receipt of benefits, and pointed out that the statement of account showed that the rent payments made had been received directly from the respondent. She also pointed out that no written representations had been received from the respondent to the contrary.

Findings in Fact

19. The tribunal made the following findings in fact:
 - The property is owned jointly by Places for People Homes Ltd, which is named as the landlord on the tenancy agreement.

- There was a short assured tenancy in place between the applicant and the respondent. The tenancy commenced on 4 June 2015, running for an initial period of twelve months, and continuing on a monthly basis thereafter.
- The monthly rent payable in terms of the tenancy agreement was £650 per calendar month payable in advance at the start of the tenancy, later rising to £655, and then £690 from 1 October 2019.
- The form AT6 contained the prescribed information and was dated 10 October 2019. There was evidence that the form AT6 had been validly served on the respondent by sheriff officer on 10 October 2019.
- No notice to quit was required, as the tenancy agreement set out the relevant grounds for possession.
- As at both the date of service of the AT6 and the date of the CMD, the respondent was in rent arrears of at least 3 months.

Reasons for Decision

20. The tribunal was satisfied that the form AT6 had been validly served on each respondent, for the reasons stated at paragraphs 14 and 15 above.

21. Ground 8 as set out in Schedule 5 of the 1988 Act states:

'Both at the date of service of the notice under section 19 of this 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'.

In terms of section 18 and Schedule 5 of the 1988 Act, if the tribunal is satisfied that ground 8 is established, then (subject to subsection 3A), the tribunal is required to make an order for possession. Section 3A provides that where ground 8 is established, and the rent is in arrears as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit, the tribunal shall not make an order for possession unless the tribunal considers it reasonable to do so.

22. The tribunal is satisfied on the evidence before it that the requirements for ground 8 are established. At least three months' rent was due by the respondent both at the time the AT6 form was served, and at the date of the CMD.

23. There was no evidence before the tribunal that the rent was in arrears as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit in terms of section 18 (3A) (b) of the 1988 Act. The tribunal was therefore required to grant an order for possession under section 18 and ground 8 in Schedule 5 of the 1988 Act.

24. Given that the tribunal found ground 8 to be established, it did not consider further whether grounds 11 and 12 were also established.

Decision

The tribunal grants an order in favour of the applicant against the respondent for recovery of 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.



Legal Member/Chair

19/2/20

Date