



**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/20/1282

Re: Property at 67 Greengairs Avenue, Glasgow, G51 4LH (“the Property”)

Parties:

Mrs Susan Kenny, 327 Glasgow Road, Paisley, PA1 3BA (“the Applicant”)

Ms Tina Matts, 67 Greengairs Avenue, Glasgow, G51 4LH (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be refused.

Background

1. This was a hearing to consider the application made by the Applicant dated 21st May 2020 and amended on 22nd September 2020 for an order for repossession of the Property in terms of Rule 65 of the Tribunal Rules and Grounds 14 and 15 of Schedule 5 of the Housing Scotland Act 1988 (the 1988 Act). The Hearing was scheduled to take place by teleconference as a result of the current requirement for social distancing.
2. The Applicant is the Landlord in a Short Assured Tenancy with the Respondent who is the tenant. The Applicant has title and interest by virtue of being the owner of the Property.
3. The Applicant had lodged and the Tribunal had sight and considered the following documents:-

- a. Application for repossession under rule 66 dated 21st May 2020
- b. Copy Tenancy Agreement for the Property dated 4th November 2016
- c. Copy AT5 Notice dated 4th November 2016
- d. Notice to Quit dated 3rd March 2020
- e. S33 Notice dated 3rd March 2020
- f. AT6 notice dated 3rd March 2020
- g. S11 notice to Glasgow City Council dated 26th January 2020
- h. Revised application dated 22nd September 2020 under rule 65

The Case Management Discussion (CMD)

4. A Case Management Discussion (CMD) took place on 18th November and Mr Carswell the representative for the applicant attended on his own. The Respondent did not attend or make any written representations. Mr Carswell confirmed that the application had to change from one under Rule 66 which is based on service of a S33 notice terminating the tenancy under S33 of the Housing Scotland Act 1988 to one under S18 of the 1988 Act because the requisite notice of 2 months which requires to be given to a tenant when a S33 notice is served was not given as the Sheriff officer instructed to serve the notice failed to serve it quickly enough. This meant the Applicant was now relying on Grounds 14 and 15 of Schedule 5 of the 1988 Act as specified in the AT6 notice served on the tenant by the Sheriff Officers on 13th March 2020.
5. At the CMD it was also noted evidence was still required to show that the s11 notice had been received by Glasgow City Council and a discussion took place about the AT6 notice, which does not contain a date before which proceedings will not be raised, and whether it should be treated as valid with this omission. Mr Carswell was asking the Tribunal to accept the AT6 and to accept that the date would be implied as 9th May 2020, because the AT6 form was served along with the Notice to quit and S33 Notice both of which referred to 9th May 2020 as the date by which the tenant was requested to vacate the Property. Mr Carswell went on to confirm that if the Tribunal was not satisfied that the form was valid he would be asking the Tribunal to dispense with the notice in terms of S19(1)(b) of the 1988 Act, which a Tribunal can do if it feels it is reasonable to do so.
6. The Tribunal noted this position and went on to discuss the grounds on which the application has been raised namely Grounds 14 and 15 of the 1988 Act which are that the condition of the house has deteriorated due to the acts or neglect of the tenant and that the tenant has, or a person residing or lodging with the tenant has, used or allowed the house to be used for illegal or immoral purposes or acted in an anti-social manner.
7. In the AT6 application the Applicant has specified as the reason for these grounds being met that
 - “1. Police Scotland forced entry to the property as there was an arrest warrant for you as you had been involved in illegal activity which is contrary to the terms of your tenancy. There were also clear signs inside the Property of illegal activity having taken place.

2. The internal condition of the property was poor due to neglect by yourself and by actions you had taken causing damage to the Property fabric.”

Mr Carswell indicated he believed there may have been drug activity but was not clear as he said the police had not given much information, though he was trying to get confirmation if there was a conviction. He also confirmed that he had photographs of the damage internally to the fabric of the Property. The legal member advised that in the absence of any evidence to substantiate this position and if the Applicant wishes to continue to rely on grounds 14 and 15, the Applicant would have to prove at a hearing that these grounds are met and Mr Carswell would require to lodge written evidence or have witnesses speak to any issues he wishes to rely on. The legal member reminded Mr Carswell that any incidents he seeks to rely on must relate to the Property or behaviour at the Property.

It was determined a hearing would be required to establish

- That the Applicant can evidence that the S11 notice they say was sent to Glasgow city council was sent or received.
- Whether or not the Grounds specified as the reason for possession are met;
- The Tribunal needed to consider whether the request to dispense with service of the AT6 notice is reasonable or not

The Hearing

8. The Hearing took place by teleconference at 10am on 18th December 2020 due to the continued need for social distancing. The Applicant was not present at the hearing although she was represented once again at the hearing by Mr John Carswell of JLC Property Lettings, the letting agent for the Applicant. The Respondent did not attend the teleconference although the Tribunal waited for 10 minutes past 10am to see if she would join. The Respondent was originally served with the papers by service by Sheriff Officers on 20th October 2020 and then sent intimation of the Hearing by letter so the Tribunal was satisfied that the Respondent has had proper intimation of the hearing and that it would be just and appropriate to proceed in her absence.
9. The convener made introductions and advised what the purpose of the Tribunal was and how it would be conducted.
10. The Applicant had lodged with an e-mail dated 10th December 2020 confirmation that a S11 notice had been lodged with Glasgow City Council, and several photographs of the inside of the property showing a lot of possessions strewn around the floors. There was also one photograph of a door not on its hinges.
11. In relation to the question of anti-social behaviour Mr Carswell in his e-mail notes “In addition to numerous complaints from neighbours regarding anti-social behaviour relating to noise and consuming of illegal substances at the property the premises were subject of Police action – which resulted in forced entry to the property.”

12. Mr Carswell did not lodge any written statements from neighbours in support of his allegations that there were numerous complaints about anti-social behaviour and has not brought any witnesses to the Tribunal to substantiate these submissions. When asked about this he advised that no-one wished to give evidence or make statements. He also admitted that there have not been as many complaints recently and that sometimes one neighbour in particular will phone the landlord directly about issues.
13. With regard to the police incident in March this year he again confirmed he had no evidence to lodge to support that the Respondent had been convicted or that the incident had any connection with the Property.
14. In relation to the submission that the condition of the Property had deteriorated due to the Respondent's actions Mr Carswell submitted that the photographs showed the Property was not being kept as it should and pointed to the door that was shown to be removed from its hinges as evidence of damage to the Property. He also mentioned there was another door off its hinges although this was not shown in the photographs. Finally he mentioned that the slats on a bed were damaged although he conceded when questioned that the Property had been let unfurnished..
15. He confirmed he has not conducted any further inspections due to the coronavirus pandemic and did not have anything further to submit.

Findings in Fact

16. The Respondent is the tenant in the Property let by the Applicant by virtue of a lease dated 4th November 2016 which commenced on 10th November 2016 and the lease is continuing.
17. The house was let unfurnished.
18. An AT6 form with a Notice to Quit and S33 notice was served on the tenant by the Applicant by service by sheriff officers on 13th March 2020.
19. The Date by which proceedings will not be raised was missing on the AT6 form but the grounds alleged were specified as Grounds 14 and 15 of the 1988 Act
20. There is no evidence to show the Respondent acted in an anti-social manner in or around the Property or has been convicted of any offence.
21. It has not been established that the condition of the Property has deteriorated.

Reasons for Decision

22. Firstly the Tribunal considered the error in relation to AT6 and whether it should use its discretion to dispense with the requirement of such a notice in terms of S19(1)(b) of the 1988 Act. The Tribunal found that it would be reasonable to dispense with the service of the AT6 notice as there had been an attempt to

serve an AT6 notice, the missing date was contained in related paperwork such as the S33 notice also served by the Applicant and therefore the purpose of giving the tenant the opportunity to see the details on which the Applicant was relying and to respond to the notice, had been given. For this reason the Tribunal entertained the application and went on to hear from the Applicant's representative regarding the two grounds relied on by the Applicant.

23. The Applicant has raised this action relying on two grounds of eviction set out in Schedule 5 of the 1988 Act namely:-

Grounds 14 of Schedule 5 of the 1988 Act which states

"The condition of the house or of any of the common parts has deteriorated owing to acts of waste by or the neglect or default of, the tenant or any one of joint tenants or any person residing or lodging with him or any sub-tenant of his and in the case of waste by or the neglect or default of, a person lodging with a tenant or a sub-tenant of his the tenant has not before making the order in question taken such steps as he ought reasonably to have taken for the removal of the lodger or subtenant." and

Ground 15 which states

"The tenant or a person residing or lodging with the tenant or a person visiting the house has

a) been convicted of

i) using or allowing the house to be used for immoral or illegal purposes or

ii) an offence punishable by imprisonment committed in or in the vicinity of the house or

b) acted in an anti-social manner in relation to a person residing visiting or otherwise engaging in lawful activity in the locality or

c) pursued a course of anti –social conduct in relation to such a person as is mentioned in head b) above

In this ground anti-social in relation to an action or course of conduct means causing or likely to cause alarm distress nuisance or annoyance, conduct includes speech and a course of conduct must involve conduct on at least two occasions and "tenant" includes any one of joint tenants.

Both grounds are discretionary and if the grounds are met the Tribunal then has to consider whether it is reasonable to grant an eviction order.

24. The Applicant was asked to provide evidence of the nature of the conduct or proof of conviction to support the submissions made. The Applicant's agent openly admitted he has no evidence other than his own reports that some neighbours have complained. There were no witnesses, no affidavits or even written statements for the Tribunal to consider. He referred to an incident where the Police entered the Property in March but has no verifiable details of what that relates to, and no evidence to support that it relates to conduct pertaining to the occupation of the Property. The Tribunal found that there was no case to consider in relation to Ground 15 as there was no evidence at all.

25. In relation to Ground 14 the only evidence submitted were the photographs taken 9 months ago in March after the police had entered the Property. The photographs show a lot of possessions lying around the floor but Mr Carswell could not confirm if this was left that way by the Respondent or the Police. Either way this does not show damage or deterioration to the fabric of the Property itself. Mr Carswell referred to two doors being off their hinges, he has only provided a photograph of one door, and when asked if it could be hung back on the door frame he admitted it could but is not aware if it has been as there has been no further inspection of the property. He tried to refer to the state of a bed and to slats in the frame being missing but the Tribunal pointed out that the property had been let unfurnished according to Clause 3 of the lease and he agreed that was the case and so this evidence is irrelevant.
26. Given the complete lack of evidence of any damage or deterioration to the condition of the Property the Tribunal unanimously found that the criteria in this ground was not met and it would not be reasonable to grant an order for eviction against the Respondent.
27. Evicting someone from their home is a very serious matter and the Applicant appears to have raised this action without having the evidence to back up the allegations. The Tribunal therefore found that there is no merit in this application whatsoever.

Decision

The Application for an order for eviction is refused.

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

18th December 2020
Date