

Housing and Property Chamber
First-tier Tribunal for Scotland



**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/18/0313

**Re: Property at Flat 7, 56 Milnpark Gardens, Glasgow, G41 1DP (“the
Property”)**

Parties:

**Michael Lynch, care of Western Lettings Limited, 15 Cleveden Crescent,
Glasgow, G12 0PB (“the Applicant”)**

**Miss Hayley Smith, Flat 7, 56 Milnpark Gardens, Glasgow, G41 1DP (“the
Respondent”)**

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that**

Background

An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 65 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“2017 Rules”) seeking an order for recovery of possession in relation to an assured tenancy under the Housing (Scotland) Act 1988 by the Applicant against the Respondent in relation to the subjects Flat 7, 56 Milnpark Gardens, Glasgow.

The application contained a copy of the notice to quit; AT6 form; copy tenancy agreement; copy section 11 notice; and copy rental statement. Certificates of service for the notice to quit, AT6 and Section 11 Notice were also submitted.

The applicant, Michael Lynch appeared together with his representative Mr Jwad Hanif, of Messrs Miller Becket Jackson. There was no appearance from the respondent.

Notice of the Case Management Discussion, together with confirmation that the respondent could make written representation on the application on or before 14 May 2018, had been served by sheriff officers on the respondent on 23 April 2018.

No representation had been received from the respondent.

I was satisfied that the respondent had received notice of the Case Management Discussion. Accordingly, I was prepared to proceed in the absence of the respondent.

Case Management Discussion

No preliminary motions were made.

The applicant's representative submitted that that he was seeking an order for recovery of possession of the property under Grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988; he confirmed the papers which had been lodged with the application. He advised that the tenancy agreement had commenced on 22 April 2014 until 22 October 2014 and continued on a monthly basis thereafter.

He made reference to the notice to quit and AT6 form in support of the application.

There was also submitted a schedule showing rent arrears he referred to the handwritten note showing that as at the date of the application at least three month rent was outstanding.

He advised that the rent arrears had been continuing to accrue and there was now in the region of £3691.91 rent arrears outstanding and owing. There have been a number of emails to the tenant to try and obtain repayment. The letting agents had also tried to call and visit the respondent to address the outstanding arrears. There had been no contact from the respondent to these attempts at contact.

The applicant understood that the respondent resided in the property with her 4 year old son. He was unaware of her current situation, but understood that she had been in work, then on benefits and then in employment again. He was not aware of her present position. The respondent advised that the non-payment of rent was impacting on him, as this was his source of income to him as a pension. It was therefore important for him to obtain rental payment.

Findings in Fact

I have found the following facts established:-

A tenancy agreement between the applicant and the respondent for the property. It was entered into on 22 April 2014 for an initial term until 22 October 2014. It appears that that it continued on a monthly basis thereafter. Clause 2 provides that the tenancy promises to pay rent on the day it becomes due. Clause 1.6 provided that rent was £430 per calendar month in advance.

The rental transaction statements show rent arrears due at 1 November 2017 being £1486.31 which is more than three months of rent due.

I am satisfied that as at the date of the service of the AT6 Notice (5 December 2017) that there was at least three months' rent lawfully by the respondent.

I note the emails to the respondent asking for the rent arrears to be addressed; and it appears that the respondent had persistently delayed in paying the rent which had become lawfully due.

I note that the applicant advised that the rent arrears had been increasing despite attempts to the contact the respondent.

The applicant had limited knowledge of the respondent's circumstances. I noted however that the applicant indicated that the impact that the ongoing arrears was having on him was negative as this was his pension.

There was no written or verbal representation received from the respondent in disputing any of the points or providing any other relevant information.

Reasons for Decision

Section 18 of the Housing (Scotland) Act provides that Orders for Possession

(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.

(3)If the First-tier Tribunal is satisfied that any of the grounds in Part I of Schedule 5 to this Act is established then, subject to subsections (3A) and (6) below, the Tribunal shall make an order for possession.

(3A)If the First-tier Tribunal is satisfied—

(a)that Ground 8 in Part I of Schedule 5 to this Act is established; and

(b)that rent is in arrears as mentioned in that Ground 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.

(4) If the First-tier Tribunal is satisfied that any of the grounds in 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 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.

...

(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.

On the basis of the evidence before me, I have found that an assured tenancy existed. I consider that a valid notice to quit and AT6 were served on the Respondent. I have found that the respondent was in arrears of rent. I note that the arrears are increasing. I note that attempts have been made to contact the respondent, to no avail, and she has failed to make any agreement with the applicant to address the arrears. I consider that Grounds 8, 11 and 12 of Schedule 5 of the 1988 exist. I consider that it would be reasonable to grant the order in terms of Grounds 11 and 12. I also consider that the order should be granted in terms of Ground 8.

In terms of Rule 17 of the 2017 Rules I am entitled to do anything at a case management discussion which I may do at a hearing, including making a decision.

Decision

I grant an order in favour of the applicant against the respondent 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.

M Barbour

21.5.2018

Legal Member/Chair

Date