



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 (“The 1988 Act”)

Chamber Ref: FTS/HPC/EV/19/0131

Re: Property at 89/4 Harvesters Way, Edinburgh, EH14 3JJ (“the Property”)

Parties:

Places for people homes limited, CARE OF Touchstone, 2 Crescent Office Park, Clarks Way, Bath, BA2 2AF (“the Applicant”)

Mr Moses Oluka, 89/4 Harvesters Way, Edinburgh, EH14 3JJ (“the Respondent”)

Tribunal Members:

Anne Mathie (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction and recovery of possession be granted.

- **Background**

This is an application for recovery of possession and eviction in terms of section 18(1) of the 1988 Act and Rule 65 of the Procedure Rules. The Applicant asserts grounds 8, 11 and 12 of Schedule 5 to the 1988 Act for recovery of possession.

The following documents were lodged with the application:

1. Tenancy Agreement dated 14 February 2013
2. Form AT5 dated 14 February 2013
3. Letter to Respondent with Form AT6, Notice to Quit and section 33 Notice dated 14 December 2018 and Sheriff Officers execution of service.
4. Rent statement as at 2 January 2019

5. Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003
The Respondent was advised of the Case Management Discussion and was asked to submit any written representations by 25 February 2019. The Respondent had done so but the Tribunal was only advised approximately 1 ½ hours before the Case Management Discussion of the representations. The Applicant's representative was provided with a copy of the Respondent's representations when he arrived at the Case Management Discussion.

- **The Case Management Discussion**

The Case Management Discussion called today. Mr Mathieson, TC Young Solicitors appeared on behalf of the Applicant's agents and the Respondent appeared on his own behalf. The Tribunal advised on the purpose and likely procedure of the Case Management Discussion today but advised that, out of fairness to both parties, there should be a short adjournment to allow Mr Mathieson to read the representations and take his client's instructions thereon. An adjournment of approximately half an hour followed. On reconvening, Mr Mathieson confirmed that his instructions were still to seek the eviction and payment order but that an agreement had been reached between the parties in respect of delaying execution of any payment order granted for a period of 3 months.

- **Findings in Fact**

1. The parties entered into a Short Assured Tenancy Agreement on 14 February 2013.
2. The monthly payment was initially £550 per calendar month but had been increased over the years in line with the tenancy agreement to a current figure of £610 per month (copies of evidence of rent increases was provided to the Tribunal by Mr Mathieson)
3. As at the date of service of the AT6 on 14 December 2018 the Respondent was in arrears in the sum of £1980 which was over 3 months' rent.
4. As at the Case Management Discussion today arrears stood at £3,200 (an updated rent statement was produced by Mr Mathieson in this regard).
5. Ground 8 of Schedule 5 to the 1988 Act was established.
6. The Respondent had had an ongoing battle regarding his leave to remain and this had caused him to lose his job. It was likely to be some weeks before his leave to remain was confirmed. He had not applied for any benefits as he had been advised he had no leave to recourse to public funds.
7. It did not matter that the application had been made before the expiry of the notice in the Notice to Quit and Section 33 Notice (15 February 2019) as the AT6 was being relied upon and Grounds 8, 11 and 12 were narrated verbatim in the tenancy agreement.

- **Reasons for Decision**

The Tribunal was satisfied that the rent was in arrears to the extent of £1980 at the date of service of the AT6 and £3200 at the date of the Case Management Discussion. The basis of Ground 8 was made out.

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.

A.Mathie

Legal Member/Chair

1 March 2019

Date