Housing and Property Chamber
First-tier Tribunal for Scotland

Statement of Decision 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/18/0058

Re: Property at 8 York Road, Greenock, PA16 0TY ("the Property")

Parties:

Mr Mark Duffy, 4 Kilglen Drive, Killeavy, Newry, BT35 8JW ("the Applicant")

Miss Rebecca Brown, 8 York Road, Greenock, PA16 0TY ("the Respondent")

Tribunal Members:

Joel Conn (Legal Member)

Decision

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

Background

1. This is an application by the Applicant for an order for possession in relation to an assured tenancy in terms of rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended ("the Procedure Rules"). The tenancy in question was a Short Assured Tenancy of the Property by the Applicant to the Respondent dated 14 August 2017.

2. The application was dated 10 January 2018 and lodged with the Tribunal shortly thereafter. The application relied upon a notice in terms of section 19 (also known as an "AT6") of the Housing (Scotland) Act 1988 dated 15 December 2017, providing the Respondent with notice that proceedings would not be raised before 4 January 2018. Evidence of service of the said AT6 upon the Respondent by Sheriff Officers was provided with the application, service being on 19 December 2017.

3. The said AT6 relies upon three grounds under Schedule 5 to the 1988 Act; Grounds 8, 11 and 12. All three rely upon rent arrears of £1,350 being outstanding as at the date of the AT6. The lease for the Tenancy, lodged

with the application, discloses a monthly rent of £450, which detail is further narrated in the AT6. There are thus three months of rent arrears said to be due as at the date of the AT6.

4. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Inverclyde Council on 10 January 2018 was provided with the application.

The Hearing

5. On 5 March 2018, at a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at Greenock Sheriff Court, I was addressed by Miss McQuarrie, solicitor for the Applicant. There was no appearance by the Respondent and both my clerk and the Applicant's solicitor confirmed that no contact had been received from or on behalf of the Respondent since the raising of the application.

6. I instructed my clerk to hold commencement of the CMD until 10:20 and, on commencing the CMD, I instructed the Venue Assistant to have the matter called outside the Tribunal room. There was no response. I was satisfied that there was no appearance by the Respondent nor any attempt by her to make contact to provide submissions or explain her non-appearance. In the circumstances, I was satisfied to consider the application in full at the CMD in the absence of the Respondent.

7. The Applicant's solicitor addressed me on the current level of rent arrears, providing a revised Rent Schedule showing no rent payments having been received since 30 August 2017 and six consecutive monthly rent payments having been missed in total. As at 28 February 2018, the revised Rent Schedule disclosed total rent arrears of £2,700. The Applicant's solicitor submitted that the AT6 had been validly served and that the lease was in sufficient terms, under section 18(6) of the 1988 Act, so that no Notice to Quit was required prior to this application.

8. The Applicant's solicitor confirmed that the Applicant had received no contact from the Respondent; that the Respondent had not been in receipt of Housing Benefit; and that no issues of non-provision of benefit had been raised by the Respondent as a reason for failure to make payment of rent. The Applicant's solicitor submitted that the Ground 8 of the 1988 Act was thus satisfied and, being a mandatory ground, an order for removal should be granted.

9. I sought to be addressed by the Applicant's solicitor on whether a CMD was a "hearing" in terms of Ground 8 of Schedule 5 to the 1988 Act, in that the Procedure Rules draw a distinction between a "case management discussion" and a "hearing" yet the terms of Ground 8 requires: "Both at the date of the service of the notice under section 19 of [the 1988 Act]... and at the date of the hearing, at least three months rent lawfully due from the tenant is in arrears". The Applicant's solicitor addressed me on the

terms of rule 17(4) of the Procedure Rules which permit that the "Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision". The Applicant's solicitor submitted that as a CMD could be a "hearing" for such purposes, it could also be a "hearing" in terms of Ground 8 of the 1988 Act.

10. I sought to be addressed by the Applicant's solicitor on the Respondent's home circumstances (such as any dependents and whether the Property was specially adapted for the needs of the Respondent or any dependents). The Applicant's solicitor had no information on such issues. I sought to be addressed on whether the Applicant still sought an order under Grounds 11 and 12 and whether it was reasonable for me to do so. The Applicant's solicitor made no other submissions on the reasonableness of granting an order for removal on such grounds, except submitting that it was reasonable to do so in the circumstances of the arrears.

11. The Applicant's solicitor confirmed no order in respect of expenses was to be made.

Findings in Fact

12. On 14 August 2017, the Applicant let the Property to the Respondent by a Short Assured Tenancy with a start date of 29 August 2017 and an end date of 1 March 2018 ("the Tenancy").

13. Under the Tenancy, the Respondent was to make payment of £450 per month in rent to the Applicant on the 29th of each month. In consideration of that term, rent is due on the 28th of February in terms of the Tenancy.

14. The Tenancy's terms make provision for the Tenancy being brought to an end on Grounds 8, 11 and 12 of Schedule 5 to the Housing (Scotland) Act 1988 while it is still an "assured tenancy" in terms that Act.

15. On 15 December 2017, the Applicant's agent drafted an AT6 form in correct form giving the Respondent notice in terms of section 19 of the 1988 Act of an intention to raise proceedings for possession in terms of Grounds 8, 11 and 12 of Schedule 5 to the 1988 Act, all based on there being three months of rent arrears, totalling £1,350 as at the date of the AT6. The AT6 gave the Respondent notice that proceedings would not be raised before 4 January 2018.

16. On 19 December 2017, a Sheriff Officer acting for the Applicant competently served the AT6 upon the Respondent. The Respondent was provided with sufficient notice of the Applicant's intention to raise proceedings for possession on the said grounds.

17. On 10 January 2018, the notice under the AT6 having expired, the Applicant raised proceedings for an order for possession with the Tribunal, on the grounds narrated in the AT6.

18. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Inverclyde Council on 10 January 2018 on the Applicant's behalf.

19. On 1 February 2018, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondent, providing the Respondent with sufficient notice of the CMD of 5 March 2018.

20. On 5 March 2018, the Respondent was in rent arrears under the Tenancy of £2,700, being six months consecutive unpaid rent.

21. No information was provided to the Tribunal regarding any delay of failure in the payment of relevant housing benefit or relevant universal credit.

22. No information was provided to the Tribunal regarding any reason while it would be unreasonable to grant an order for possession under any of the discretionary grounds in Part II of Schedule 5 to the 1988 Act.

Reasons for Decision

23. The application was in terms of rule 65, being an order for possession in relation to assured tenancies. I was satisfied, on the basis of the application and supporting papers, and the updated rent schedule and oral submissions provided by the applicant's solicitor at the CMD, that a valid AT6 had been issued on the lease; that it had expired without the breaches being resolved; and that the non-payment of rent remained unaddressed as at the date of the CMD. As at the date of the CMD, rent had been unpaid for six months.

24. Having considered the question as to whether a CMD was a "hearing" in terms of Ground 8 of Schedule 5 to the 1988 Act, I was satisfied that it was. Though the Procedure Rules distinguish between a "case management discussion" and a "hearing", this distinction is not within the 1988 Act and would not appear to be a relevant distinction when reading the terms of that Schedule. Read simply, the 1988 Act seeks a consideration of whether, at the date of a hearing considering the order for possession, there are three months arrears of rent. The Procedure Rules allow at rule 17(4) for a CMD to be such a hearing where an order for possession is considered and potentially granted.

25. Furthermore, a similar distinction in terms is seen in the Summary Cause Rules (in the Act of Sederunt (Summary Cause Rules) 2002), under which similar applications for orders for possession were administered by the Sheriff Courts prior to the Tribunal's jurisdiction in this area of law. In an

undefended Summary Cause action for recovery of possession of a heritable property, in terms of rule 7.1(4) of the Summary Cause Rules "where no form of response has been lodged in an action... for recovery of possession of heritable property ... the action shall call in court on the calling date and the sheriff shall determine the action as he thinks fit". The said calling at the Calling Date is not defined as a "hearing". There is, however, such a diet which is called a "hearing" in the Summary Cause Rules. This is where a response was lodged. In terms of Summary Cause Rule 8.2(2), this "hearing" is also held on the "Calling Date". By way of comparison, if there were matters of disputed evidence, the Sheriff would "fix a diet of proof" in terms of Summary Cause Rule 8.3(3)(d) and there were no doubt defended cases where the Sheriff required to consider whether three months rent arrears remained at the diet of proof. I know of no authority which holds that the consideration of the existence of three months of rent arrears at "the date of the hearing" under Ground 8 of Schedule 5 to the 1988 Act could not occur at either an undefended Calling Date or a diet of proof under the Summary Cause Rules (both being diets distinct from a Summary Cause "hearing" under the said Rules). I hold that no distinction should be drawn between a CMD and a "hearing" under the Tribunal's Procedure Rules either. As I say, the terms of Ground 5 of Schedule 5 to the 1988 Act read as seeking consideration at the date when consideration of the order for possession can be validly made and that can be a CMD under the Procedure Rules.

26. I was satisfied from the submissions of the Applicant's solicitor that there were no known issues of failure or delay in benefit and thus it was reasonable to grant an order in terms of Ground 8 of Schedule 5 to the 1988 Act.

27. Though the Applicant's solicitor had no information on the Respondent's domestic situation, I was further satisfied that I was still entitled to make a determination that it was reasonable to grant any order in terms of Grounds 11 and 12 of Schedule 5 to the 1988 Act as there were no material circumstances brought to the Tribunal's attention that would suggest it would be unreasonable in the circumstances of six months of continual non-payment of rent.

Decision

28. In all the circumstances, I was satisfied to make the decision to grant an order against the Respondent for possession of the Property under section 18 of the Housing (Scotland) Act 1988 in normal terms.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Joel Conn

Legal Member/Chair

13 March 2018

Date