



**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/19/3610

Re: Property at 3 Stuart Avenue, Burnside, Glasgow, G73 4JL (“the Property”)

Parties:

Mr Cliff Thomas, 10 Clamps Terrace, East Kilbride, G74 2HA (“the Applicant”)

**Mr Stephen Calder, Mrs Hazel Calder, 3 Stuart Avenue, Burnside, Glasgow,
G73 4JL (“the Respondents”)**

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondents)

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

Background

1. 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 (“the 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 Respondents in relation to the property.
2. The application contained,
 - a copy of the tenancy agreement;
 - notice to quit;
 - copy of the AT6 with execution of service;
 - rent statement; and
 - section 11 notice to local authority.

3. The Applicant appeared together with his representative, Pamela Davren, from Fineholm Lettings. There was no appearance by the Respondents.
4. Notice of the Hearing was originally served on the Respondents by sheriff officers on 7th January 2020, the Respondents had requested that the hearing be adjourned, and that postponement request had been granted. Notice of today's hearing had been posted to the Respondents. The Respondents had emailed the tribunal on 19 February 2020 seeking a further postponement. The request related to the first Respondent's application for bankruptcy proceedings not being concluded; failing which they sought confirmation that they were entitled to appeal any decision within a 30 day appeal period. The Applicant wished to proceed with today's hearing and advised that the case had already been postponed. It appeared that the postponement request related only to having final figures of outstanding debt agreed with the Accountant of Bankruptcy. Having regard to the overriding objective to deal with proceedings justly, and in this case, avoiding delays so far as compatible with the proper consideration of the issues, I was prepared to proceed with the hearing.

Hearing

5. The Applicant confirmed that he was seeking an order for eviction in terms of Grounds 8, 11 and 12 of schedule 5 of the Housing (Scotland) Act 1988 Act. Reference was made to the tenancy agreement between the parties; the AT6 form; notice to quit and the rental statement. The Applicant's representative advised that when the AT6 notice had been served on 20 September 2020 the rent arrears stood at £2,797 and this is a sum more than three month's rent. She advised that rent was due in advance on the first of each month.
6. The Applicant advised that the Respondents had been in the property for a number of years. There had been on-going rent arrears issues for a number of years, at least since around 2016. The Applicant had served at least three AT6 notices on the Respondents over the years. While there had been attempts by the respondents over the years to address rent arrears issues, on this occasion they had not been able or were unwilling to do so. The arrears had continued to accrue and there had been no payments to the rent account since September 2019. The arrears had continued to accrue since the application was lodged and were now £5,865.94. The Applicant understood that the Respondents were seeking bankruptcy. The Applicant advised that the Respondents were aware of the outstanding arrears and there had been attempts by his letting agent to get repayment arrangements entered into however they had been unsuccessful. The Applicant advised that the household consisted of the Respondents and their one son who was around 14 years old.
7. The Applicant asked that the order for possession be granted in favour of the Applicant to recover the property.

Findings in Fact

8. The tribunal have found the following facts to be established:-
9. A tenancy agreement was entered into between the Applicant and the Respondents for the Property and exists between the parties. It was entered into on 7 November 2013.
10. Clause 2 in the tenancy agreement provides that monthly rent is £750 and the rent payment date is 1st of each month. Clause 2 of the tenancy agreement provides that monthly rent is due in advance.
11. There was provision for rent increase in Clause 2a. It appears that the rent had been increased and was currently £921.94 per month.
12. That the rental statement showed total rent arrears outstanding as at 1 September 2019 being £2,797.00.
13. That it appeared that there had been no payments towards the rent arrears other than those shown on the rent statement and that the rent arrears had now increased to £5,865.94.
14. That the rental statement showed entries from 29 August 2013 until 6 November 2019.
15. That the rental statement appeared to show regular arrears from around 2016.
16. That as at 21 February 2020 the rent outstanding appeared to be £5,865.94.
17. That AT6 Notices had been served by sheriff officer's service on the Respondents by the Applicant on 20 September 2019.

Reasons for Decision

18. I find that there are contractual obligations as set out within the tenancy agreement, which include a duty to pay rent.
19. The tenancy agreement provided for recovery of the property where the Respondents were in breach of the grounds set out in schedule 5 of the 1988 Act.
20. There was evidence before me of persistent non-payment of the rent in excess of a three month period both at the date of the service of the AT6 and at today's hearing. There appeared to also be a regular history of non-payment of rent. I heard evidence of attempts to contact the Respondents to address their arrears but this had not been met with success on this occasion. There was no evidence before me that the rent arrears were as a

consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit.

21. I find Grounds 8, 11 and 12 met and I consider that it would be reasonable to grant the order.

22. Accordingly, I am prepared to make an order for eviction under Grounds 8, 11 and 12.

Decision

23. The Tribunal grants an order in favour of the Applicant against the Respondents 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. 2. 20

Legal Member/Chair

Date