



**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/18/0489

**Re: Property at 22 Corby Craig Walk, Bilston, Edinburgh, EH25 9TJ (“the
Property”)**

Parties:

**Lowther Homes Limited, 25 Cochrane Street, Glasgow, G1 1HL (“the
Applicant”)**

**Ms Tammy Mackinnon, 22 Corby Craig Walk, Bilston, Edinburgh, EH25 9TJ
 (“the Respondent”)**

Tribunal Members:

Jan Todd (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondent)

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

- **Background**

This was a hearing to determine an application by the Applicant for an order for possession of the Property let on an assured tenancy to the Respondent, under Grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988, all in terms of Rule 65 of the First Tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations (the Rules).

- **The Hearing**

At the Hearing the Applicant was represented by Mr Mathieson of T C Young Solicitors. The Respondent did not appear and was not represented. The Tribunal noted the Respondent had been served a copy of the application and accompanying documents personally by sheriff officer on 17th April and so was made aware of the hearing and the fact the Tribunal may make an order in her

absence if satisfied the grounds were met. The Tribunal went on to hear from the Representative and asked some preliminary questions to clarify that the Applicant still leased the Property, amongst others, from the owner of the Property; to clarify the amount outstanding at today's date and to clarify when the joint tenant left the Property. Mr Mathieson after a break in the hearing was able to produce written evidence of the outstanding rent due, to support his verbal admissions and clarify the manual adjustment mentioned in the original rent statement. After hearing from Mr Mathieson and considering the written evidence of rent arrears and being satisfied that the facts supported at least Ground 8 the Tribunal granted the order for eviction.

Findings in Fact

1. The Applicant and the Tenant along with a joint Tenant Mr Josh Jenkins, entered into a short assured tenancy of the Property by a written agreement dated 18th November 2016.
2. The rent due in terms of clause 4.1 of the lease was £591.50.
3. The joint tenant gave notice to terminate the tenancy and left the property on 14th April 2017. The tenancy continued in the same terms with the Tenant as the sole tenant and is now a statutory assured tenancy.
4. In terms of the lease clause 18 sets out the grounds for termination of the Tenancy. Clause 18.5 states the tenancy can be terminated by the Landlord " giving the Tenant the required notice in the prescribed format in terms of S19 of the Act of their intention to commence proceedings and then subsequently obtaining an order for recovery of possession from The Tribunal on one or more of the following grounds set out in Schedule 5 of the Act..
5. The Grounds include :- Ground 8- Both at the date of service of the Notice under Section 19 of the Act relating to proceedings for possession and at the date of the hearing at least 3 months rent lawfully due from the Tenant is in arrears.
6. Ground 11 –whether or not any rent is in arrears on the date on which proceedings for possession are begun the Tenant has persistently delayed paying rent which has become lawfully due.
7. Ground 12 Some rent lawfully due from the Tenant a) is unpaid on the date on which he proceedings for possession are begun and b) except where subsection (1)(b) of Section 19 of the Act applies was in arrears at the date of the service of the notice under that section relating to those proceedings.
8. A notice in the prescribed form in terms of Section 19 of the Act (an AT6 notice) dated 11th January was served by sheriff officers on the Tenant on 16th January 2018 giving notice that the Applicant sought to recover possession on Grounds 8,11 and 12 of Schedule 5 of the Act.
9. The rent arrears due at the date of the serving of the AT6 notice are £3924.
10. The rent arrears due at today's date (the date of the hearing are £6288.50.
11. The rent arrears due at the date of service of the notice and the date of the hearing exceed 3 months rent lawfully due.

12. There was no evidence that there was a delay or failure in payment of housing benefit or universal credit which caused the delay or failure to pay rent.
13. The Respondent has persistently delayed or failed to pay rent lawfully due. In particular she has not paid any rent in November and December 2017 and January 2018. The respondent attempted to pay £791.50 in February and in March but this has been bounced by her bank and not credited to the Applicant's account. The current arrears are £6288.50.
14. The Respondent continues to live in the Property.

- **Reasons for Decision**

S18(3) of the Act states that if the Tribunal is satisfied that any of the grounds in Part 1 of Schedule 5 of the Act is established then subject to subsections (3A and 6) below he shall make an order for possession.

S18(3A) states if the Tribunal is satisfied that

- a) Ground 8 in part 1 of Schedule 5 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 relative housing benefit of universal credit he shall not make an order for payment unless he considers it reasonable to do so.

In terms of S18(6) of the Act the Tribunal shall not make an order for possession of a house which 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 1 of Schedule 5 of the Act ... and
- b) The terms of the tenancy make provision for it to be brought to an end on the ground in question.

S19 of the Act states that the Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless the a) landlord has served on the tenant a notice in accordance with this section.

S19(2) The Tribunal shall not make an order for possession on any of the Grounds in Schedule 5 to this Act unless that ground and the particulars of it are specified in the Notice under this section; but the grounds specified in such a notice may be altered or added to with leave of the Tribunal.

The Applicant having served notice in terms of S19 of the Act, having specified grounds 8, 11 and 12 and laid out the particulars of those grounds in the AT6 notice has satisfied the conditions in S18 and 19 of the Act. The Tribunal is satisfied from the evidence produced prior to and at the hearing that 3 months rent was due and owing at the date of service of that notice on 16th January 2018 and at today's date and the terms of Ground 8 of Part 1 of Schedule 5 of the Act is met, therefore there being no indication that the failure to pay is a result of delay or failure in payment of housing benefit or universal credit the Applicant is entitled to an order for possession of the Property in terms of S18(3) of the Act.

- **Decision**

The Tribunal grants an order for possession of the Property to the Applicant

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.

J Todd

Legal Member/Chair

Date

11th May 2018