



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/18/0618

Re: Property at 3 Glencairn Road, Paisley, PA3 4LN (“the Property”)

Parties:

Mainline Developments Limited, 90 Mitchell Street, Glasgow, G1 3NQ (“the Applicant”)

Mrs Bernadette Mooney, 3 Glencairn Road, Paisley, PA3 4LN (“the Respondent”)

Tribunal Members:

Adrian Stalker (Legal Member) and Leslie Forrest (Ordinary Member)

Decision (in absence of the Respondent)

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

(1) That ground 8 of schedule 5 to the Housing (Scotland) Act 1988 (“the Act”) is established;

(2) That grounds 11 and 12 were also established, and it is reasonable to grant an order;

therefore the Tribunal granted an order for possession of the Property in favour of the landlords, under section 18(3) and (4) of the Act.

Background

1. On or about 1 December 2013, the Applicant let the property to the Respondent, under an assured tenancy. The parties entered into a written tenancy agreement. This states, in clause (ONE) that the tenancy is to run “for the period of 6 months from 1st of December 2014 to 31st May 2014.” The parties signed the tenancy agreement on 1 December 2013.

2. By applications dated 13 March 2018, the Applicant sought an order for recovery of possession under section 18(3) and (4) of the Act, and an order for payment of £5,589.17, being rent arrears. The rent arrears application is FTS/HPC/CV/18/0620. Reference is made to the Tribunal's decision in relation to that case, also dated 7 August 2018.

3. On 19 June 2018, a legal member having delegated powers referred the case to the Tribunal for a hearing.

The hearing

4. The hearing took place at 10 am on 7 August 2018, at the Glasgow Tribunals Centre, Room 112, 20 York Street, Glasgow, G2 8GT. Carolann McPhillimy, of the Applicant, attended, along with Mr Buchanan, of Buchanan Burton Solicitors, their agents. The Respondent did not appear, and was not represented.

Findings in fact, and in fact and law; reasons for decision

5. Along with the application, the Applicant had produced a copy of the tenancy agreement, a notice to quit to quit served by sheriff officers on 29 September 2017, an AT6 (under section 19 of the Act) served on 4 December, and notice to the local authority (under section 19A of the Act), sent on 7 March 2018.

6. The Tribunal was satisfied that these notices were in order. As regards the notice to quit, Ms McPhillimy and Mr Buchanan were able to confirm that the reference to "1st of December 2014" in clause (ONE) of the tenancy agreement was a typographical error. "2014" should read "2013", which is consistent with the parties' date of signing. This means that the term of the tenancy ran from 1 December to 31 May (inclusive) and 1 June to 30 November (inclusive), between 2013 and 2017, and was terminated by the notice to quit, which bears to take effect on 30 November 2017.

7. The AT6 is in the correct form, stating grounds 8, 11 and 12, and basis on which those grounds are said to be established.

8. The notice to the local authority also contained an error, being addressed to "North Lanarkshire Council, Renfrewshire House, Cotton St, Paisley PA1 1WB". This should have been "Renfrewshire Council". However, the correct address for the council is given, and the covering letter also names the correct local authority, and the right address. Accordingly, the Tribunal was satisfied that notice had effectively been given to the local authority under section 19A of the Act.

9. The Tribunal was provided with a copy of an email from the Housing Benefit section of Renfrewshire Council, showing the payments of housing benefit made to

the Respondent. It was also provided with a rent account, showing arrears accumulating from June 2016 onwards. The account had been in arrears since then. The four-weekly rent stated in the Applicant's account was £480. The arrears increased significantly in the period October 2016 to November 2017, during a period when the Respondent's housing benefit payments were significantly less than the rent. By November 2017, the arrears stood at £6,984.81. There is a credit of £1,217.30 on or about 22 November 2017, which is a housing benefit backdate. Thereafter, between November 2017 and April 2018, the level of housing benefit was higher: being £406.16 every four weeks. However, that was not enough to cover the rent. Consequently, the arrears continued to rise, albeit more slowly, leading to a balance of £6,136.71, as at 12 March 2018.

10. In light of the documents produced, and in the absence of any representation by the Respondent to the contrary, the Tribunal was satisfied that:

- Both at the date of the service of the notice under section 19 and at the date of the hearing, at least three months' rent lawfully due from the Tenant is in arrears.
- The Tenant has persistently delayed paying rent which has become lawfully due.
- Some rent lawfully due from the Tenant was unpaid on the date when these proceedings were commenced.

11. Accordingly grounds 8, 11 and 12 of schedule 5 of the Act are established. As regards grounds 11 and 12, the Tribunal considered that it was reasonable to grant the order, given: (a) the high level of arrears; (b) the fact that the account had been in arrears for more than 2 years.

Decision

12. The Tribunal accordingly granted an order for possession under section 18(3) and (4).

Landlord Registration

13. During the course of the hearing, the Tribunal queried the details given by the Applicant, in their notice to the local authority under section 19A of the Act, as to landlord registration. The registration number was not a valid number, which would have been given by Renfrewshire Council, under its system of registration. The Ordinary Member had ascertained, in advance of the hearing, that the Property was not registered on the Landlord Registration Scotland system.

14. Ms McPhillimy explained that the Applicant had previously been registered, but the registration had lapsed. She had not made arrangements to renew, because she expected that the tenant would leave, and renewal would not be necessary, as the Applicant intends to sell the Property. She maintained that she had recently paid the fee for renewal. However, on checking the Landlord Registration Scotland system on the day of the hearing, the Tribunal found that the Property was still unregistered.

15. The Tribunal indicated its intention to report the Applicant's apparently unregistered status, under part 8 of the Antisocial Behaviour etc. (Scotland) Act 2014, to Renfrewshire Council. It will then be a matter for the council to investigate.

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.

Adrian Stalker

Legal Member/Chair

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Date