



**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 Act”)**

**Chamber Ref: FTS/HPC/EV/19/0010**

**Re: Property at 14 Killoch Way, Paisley, PA3 1EB (“the Property”)**

**Parties:**

**Mr Buckshiesh Singh, 33 Bell Street, Renfrew, PA4 8PP (“the Applicant”)**

**Mr Stephen Samuel McDowell, 14 Killoch Way, Paisley, PA3 1EB (“the Respondent”)**

**Tribunal Members:**

**Ewan Miller (Legal Member) and Ann Moore (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession of the Property should be granted to the Applicant in terms of s18 of the Act on the grounds set out in Grounds 11, 12 and 15 of Schedule 5 to the Act**

**Background**

The Applicant was the owner of the Property. He had let the Property to the Respondent on a Short Assured Tenancy that commenced on 2 August 2017 and terminated on 2 August 2022. The initial monthly rent payable was £655.

The Applicant alleged that issues had arisen in relation to the Property after the first year of the tenancy had passed. The Applicant alleged, inter alia, that arrears of rent had developed, that the Property had not properly been looked after by the Respondent and that there had been anti-social behaviour occurring at the Property.

The Tribunal had before it, inter alia, the following information:-

- Application to the Tribunal by the Applicant dated 27 December 2018

- Copy of the lease between the Applicant and Respondent of the Property dated 2 August 2017
- Copy AT6 dated 12 November 2018 and Certificate of Service from Sheriff Officers
- A Schedule of Condition showing the Property prior to occupation by the Respondent
- An Affidavit by the Applicant's wife relating to alleged threatening and racial behaviour by the Respondent
- A Schedule of Rent Arrears
- A copy of a Case Management Discussion of the Tribunal dated 18/3/2019
- An Extract Conviction in relation to an offence under the Misuse of Drugs Act 1971 by the Respondent and details of an extant charge of Threatening and Abusive Behaviour

A Case Management Discussion had been held previously on 18/3/2019. The matter had been referred to a full hearing of the Tribunal at that stage to allow more information to be acquired and also because the Applicant was only seeking possession under discretionary grounds under Schedule 5 of the Act

The Tribunal noted that the case papers for both the Case Management Discussion and the Hearing of 30 April 2019 had been intimated on the Respondent by Sheriff Officers. The papers intimated that a decision could be made in the absence of the Respondent.

The discretionary grounds sought were Grounds 11, 12, 13, 14 and 15. More detail on each of these is set out in the Reasons section of this Decision below

### **The Hearing**

A Hearing was held at Glasgow Tribunal Centre on 30 April 2019. The Applicant was not present but was represented by Ms Ruth Wallace of MSM Solicitors, Glasgow. The Respondent was neither present nor represented.

The Respondent had not submitted any written representations at any point in the process nor had he attended the Case Management Discussion or Hearing. As noted above, the papers served on the Respondent by Sheriff Officers had specifically stated that a decision could be made in his absence. The Tribunal was satisfied that it was appropriate to do so.

### **Findings in Fact**

The Tribunal found the following facts to be established:-

- The Applicant was the owner of the Property
- The Applicant had let the Property to the Respondent on a short assured tenancy
- There were arrears of rental at the point of raising proceedings in November 2018 of around £1091

- There had been 5 consecutive months of persistent delay in paying rent at the point proceedings were raised in November 2018
- On the balance of probability the rent arrears were not due to any issues in relation to payment of Housing Benefit
- The Respondent had a conviction under the Misuse of Drugs Act 1971 s4(3)(b) for supply of diamorphine at or in the locality of the Property
- The Respondent had been charged with Threatening and Abusive Behaviour towards the Applicant's wife and daughter. He had failed to attend at court and a warrant was outstanding for his arrest
- The tests set out in Grounds 11,12 and 15 of Schedule 5 of the Act had been met and it was reasonable in the circumstances to make an order for possession on each of these grounds.
- The tests set out in Grounds 13 and 14 of Schedule 5 of the Act had not been met

## Reasons

As stated above, given notification to the Respondent had occurred, the Tribunal was satisfied that it was appropriate to proceed in the absence of the Respondent.

The Tribunal first considered Ground 11 of Schedule 5 to the Act – that the Respondent had persistently delayed paying rent, which had become lawfully due. The Tribunal had before it a Schedule of Rent Payments produced by the Applicant. The Applicant's agent had also produced bank statements from the Applicant on the day of the hearing. The Schedule showed the first year or so of the rent being paid timeously and in full. However, from June 2018, every month there had been a delay in paying all or some of the rental. This had continued each month until the date on which proceedings had begun. The Tribunal considered that 5 consecutive months represented a persistent course of behaviour. The Tribunal was of the view that it was a reasonable view for it to take that an order for possession should therefore be granted. There was no evidence or explanation from the Respondent as to why this had occurred, such as issues around delay in receiving Housing Benefit. The Tribunal would have considered any reasonable explanation given the discretionary nature of the ground for possession sought. However, in the absence of any explanation the Tribunal was satisfied it was appropriate to exercise its discretion.

The Tribunal then considered Ground 12 of Schedule 5 to the Act – some rent due is unpaid at both the date of which proceedings are begun and at the date of the service of notice under s19 of the Act. The Tribunal noted again the Schedule of Rent Payments produced. This showed a sum outstanding of £1091. Whilst perhaps not a huge sum, a landlord with a mortgage to be paid could be prejudiced by this. Again, there was no explanation from the Respondent for the Tribunal to consider. Accordingly, in the absence of any explanation, the Tribunal considered it reasonable to exercise its discretion and to grant possession on Ground 12

The Tribunal then considered Ground 13 of Schedule 5 to the Act – an obligation of the tenancy (other than payment of rent) had been broken. The Applicant's agent did not focus particularly on this ground. There was evidence of criminality and antisocial behaviour, however, in the view of the Tribunal, this was better considered under Ground 15. There was in the papers reference to the Respondent smoking and

keeping a pet in the Property, both of which were a breach of the terms of the lease. However, the Tribunal was satisfied that even assuming they had occurred, they were minor breaches that did not merit an order for possession being granted. It would not be reasonable to do so based on the evidence before it.

The Tribunal considered Ground 14 – in summary that the condition of the Property had deteriorated by actions of the Respondent. The Tribunal noted the Schedule of Condition prepared prior to the grant of the lease. This appeared to show the Property in good order. The Applicant's agent submitted that the Property was not being kept in good order. However, the Applicant, for the reasons stated below, had not been in the Property for some time. The Applicant's agent submitted that on the last visit (prior to proceedings having begun) the Applicant had taken some pictures and videos. However, they had not been submitted with the Application or during the Hearing or Case Management Discussion. On balance, the Tribunal was not satisfied that the evidentiary threshold had been met by the Applicant and that without some supporting evidence it would not be reasonable to grant the order on this ground.

The Tribunal then considered Ground 15, in summary a tenant has committed an offence punishable by imprisonment, used the Property for illegal or immoral purposes or acted in an antisocial manner to a person lawfully visiting the Property. The Applicant's agent had produced an Extract Conviction from Paisley Sheriff Court which confirmed the Respondent had been convicted under the Misuse of Drugs Act 1971 s4(3)(b) (being a conviction for the supply of drugs). As this was from Paisley Sheriff Court the Tribunal was satisfied that, taken at its best, the supply had taken in the locality of the Property. The Applicant's agent understood that the Property had been raided by the Police in relation to drug dealing from the Property by the Respondent. The Tribunal noted that the Respondent had a previous conviction in late 2018 from Glasgow Sheriff Court for the supply of heroin as well.

The Tribunal was also provided with a letter from the Procurator Fiscal addressed to the Applicant's wife and daughter (as part of the Victim Information Service) which confirmed that the Respondent had been charged with racially aggravated Threatening and Abusive behaviour in relation to them. An affidavit from the Applicant's wife set out details of the incident. It had occurred at the Property when the Applicant's wife was trying to discuss tenancy issues with the Respondent. The affidavit alleged that the Respondent had racially abused her. Whilst the Tribunal accepted that this matter had not been to trial (the Respondent having failed to appear and had a warrant issued for his arrest) and therefore the Respondent had not been found guilty, nonetheless, there had been sufficient evidence for the Fiscal to feel there was merit in prosecuting. The Tribunal had before it the affidavit evidence from the Applicant's wife also.

Looking at the totality of the Respondent's behaviour from the evidence produced, the Tribunal was satisfied that there was evidence of immoral behaviour and criminal convictions at or in the location of the Property. There was also evidence of antisocial and racist behaviour. It was not reasonable for the Applicant to have to tolerate this at his Property. It was reasonable for the Tribunal to exercise its discretion and grant an order for possession in relation to Ground 15. The Tribunal noted the decision in *Midlothian Council v Green*, which, whilst relating to a Scottish

Secure Tenancy, concerned similar convictions under the Misuse of Drugs Act 1971 and where the Sheriff had felt it appropriate to grant an order for possession.

In summary, the Tribunal was satisfied that taking each Ground on an individual basis (and not cumulatively) Grounds 11, 12 and 15 were appropriate for the Tribunal to exercise its discretion and grant an order for possession.

### **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.**

**E Miller**

**Legal Member/Chair**

30/4/19

**Date**