

Housing and Property Chamber
First-tier Tribunal for Scotland



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/18/0175

Re: Property at G/1, 15 Baffin Street, Dundee, DD4 6HB (“the Property”)

Parties:

Mr Richard Howie, Craigallichie Cottage, West Galcantray, Cawdor, Inverness, IV12 5XX (“the Applicant”)

Mr Scott McCafferty, G/1, 15 Baffin Street, Dundee, DD4 6HB (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order against the Respondent for possession of the Property be granted under Section 18 of the Housing (Scotland) Act 1988.

The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

- 1. By application dated 22 January 2018, the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for recovery of possession of the Property under Section 18 and Schedule 5 of the Housing(Scotland) Act 1988 based on the Respondent’s alleged failure to pay rent.**

2. On 23 February 2018 the Tribunal enclosed a copy of the Application and invited the Respondent to make written representations to the application by 13 March 2018. The Tribunal advised both parties on 23 February 2018 that a Case Management Discussion under Rule 17 of the Regulations would proceed on 28 March 2018. This paperwork was served on the Respondent by Walker Love, Sheriff Officers, Kirkcaldy on 26 February 2018 and certificate of execution of service was received by the Tribunal administration.
3. The Respondent made written representations through his representative Dundee North Law Centre on 13 March 2018.

Case Management Discussion

4. The Tribunal proceeded with the Case Management Discussion on 28 March 2018. The Applicant was represented by Mr Forsyth, Messrs Muir, Myles, Laverty. There was no appearance by Dundee North Law Centre for the Respondent. The Respondent did not appear in person.
5. Mr Forsyth explained to the Tribunal that his office had received a fax late in the afternoon on 27 March 2018 from Dundee North Law Centre to explain that neither they nor the Respondent would be attending the Case Management Discussion; the Respondent had secured alternative accommodation, did not dispute the claim and accepted that there was a mandatory ground of repossession.
6. The Tribunal had before it the tenancy agreement which showed that the Respondent had agreed to pay a monthly rent of £350 and a statement for the Respondent which showed how the rent arrears had accrued. However there was also reference on that statement to arrears from a previous tenancy of £108 and transfer of £200 to TDS (Tenancy Deposit Scheme). After enquiry by the Tribunal and after a short adjournment Mr Forsyth advised that he was not insisting on payment of either of these two amounts. He also advised that the Respondent had made a payment of £350 on 22 March 2018 and that the arrears had increased to £2408, which figure did not include the sums relating to the previous tenancy or TDS.
7. The Tribunal had before it a Notice to Quit dated 6 November 2017 which required the Respondent quit the Property on 21 November 2017. Mr Forsyth after enquiry by the Tribunal accepted that the Notice to Quit was not valid as it did not provide sufficient notice to the Respondent and in any event did not tie up with the ish date of the tenancy. He submitted that as this was a breach of tenancy during the contractual term with the tenancy agreement clearly providing that it could be terminated on Ground 8 during the contractual term that the Notice to Quit was not strictly necessary. The Tribunal also had before it an AT6 dated 6 November 2018 which referred to two grounds of possession

under Schedule 5 of the Housing (Scotland) Act 1988 namely Grounds 8 and 11. The AT6 made reference to the fact that the Respondent was more than 3 months in arrears. Mr Forsyth submitted that the Tribunal were required to grant the Order in terms of Sections 18(3) and 18(6) of the Housing (Scotland) Act 1988 in all the circumstances.

Findings in Fact

1. The Applicant is the heritable proprietor and landlord of the Property. The Respondent is the tenant of the Property and continues to reside in the Property.
2. The Applicant and the Respondent agreed by way of a Tenancy Agreement dated 4 August 2017 in relation to the Property that the Respondent would pay the Applicant a calendar monthly rent of £350.
3. The Respondent has fallen into arrears of rent.
4. The Respondent made a payment to account on 22 March 2018 of £350.
5. At the date the AT6 was served, the Respondent was more than 3 months in arrears. He had also persistently delayed in paying rent.
6. Arrears of rent at the date of the Case Management Discussion were £2408.
7. Arrears of rent at the date of application under deduction of £308 being £108 arrears under a previous tenancy and £200 relating to a deposit amounted to £1750.
8. Clause 20.4 of the tenancy agreement between the parties provides that the tenancy can be brought to an end on all the grounds of repossession as laid out in Schedule 5 of the Housing (Scotland) Act 1988.

Reasons for Decision.

1. The Tribunal considered the issues set out in the applicant and noted that the Respondent no longer disputed the claim against him. The Tribunal proceeded to hear and determine the application in absence of the Respondent on being satisfied that the requirements of Rule 24(1) of the Regulations regarding giving notice of the hearing to the Respondent had been met.
2. The Tribunal concluded that the Applicant had established that both at the date of service of the AT6 and at the date of the Case Management discussion the Respondent was more than three months in arrears. The

Tribunal noted that this had been accepted by the Respondent's representative.

3. The Tribunal concluded that the Applicant was entitled to an order for recovery of possession in terms of Section 18 (3) with reference also to Section 18(6) of the Housing (Scotland) Act 1988. Whilst the tenancy was still a contractual short assured tenancy, not having been brought to an end by a valid Notice to Quit section 18(6) of the Housing (Scotland) Act 1988 was satisfied; the tenancy agreement provided that it could be brought to an end under any of the grounds of repossession in Schedule 5 of the 1988 Act.
4. The Applicant provided evidence of non-payment of rent in the form of a rent statement. The Respondent's representative confirmed in a fax that the claim was not disputed. The Tribunal is satisfied that the Respondent is in arrears of rent in the sum of £1750 being more than 3 months in arrears at the date of the Case Management Discussion.
5. In terms of Section 18(3) of the Housing (Scotland) Act 1988 the Tribunal shall make an Order for possession if satisfied that any of the Grounds in Part 1 of Schedule 5 of the Act are established. The Tribunal was satisfied that the applicant had established that there were more than 3 months arrears of rent and that accordingly had established a case under Ground 8 of Schedule 5. Accordingly the Tribunal found that the applicant was entitled to an order for recovery of possession of the Property and accordingly granted the order sought.

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.

S Evans

Legal Member/Chair

28 March 2018.

Date