

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/18/1537

Re: Property at 26 Lendrick Avenue, Callander, Stirling, FK17 8LZ (“the Property”)

Parties:

C/O Martin & Co, 27 Sandpiper Meadow, Alloa, FK10 1QQ (“the Applicant”)

Mr David Alan Jeeves, Ms Simone Crevecoeur, 26 Lendrick Avenue, Callander, Stirling, FK17 8LZ (“the Respondents”)

Tribunal Members:

Nairn Young (Legal Member) and John Blackwood (Ordinary Member)

Decision (in absence of the first Respondent)

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

- **Background**

This is an application for an order for possession of the Property, which is let to the Respondents by the Applicant in terms of a short assured tenancy. It called for a hearing on 28 September 2018 at 2pm. The Applicant was present and represented by Mr Runciman of Gilson Gray Solicitors. The first Respondent was not present or represented; the second Respondent was present in person.

- **Findings in Fact**

The factual background was agreed between the parties, as follows:

1. The Property was let to the Respondents by the Applicant in terms of a short assured tenancy agreement dated 31 October 2016 (‘the Lease’). The Lease commenced on 18 November 2016 and ran initially to 17 November 2017, continuing on a monthly basis thereafter.

2. In terms of the Lease, the sum of £850 rent is due on a monthly basis on the 15th day of the month. No payment was made on 15 March 2018, or subsequently. As at the date of the hearing, the sum of £5,950 was outstanding. This sum has not accrued due to a delay or failure in payment of a relevant housing benefit or universal credit.
3. The Applicant served a notice under s.19 of the Housing (Scotland) Act 1988 ('the Act') in form AT6 on the first Respondent and second Respondent separately, on 21 and 18 May 2018 respectively. These both gave notice of the Applicant's intention to raise proceedings for recovery of possession on Grounds 8, 11 and 12 of schedule 5 to the Act and gave particulars of the basis for the grounds being established.
4. So far as relevant to this case, the Lease states, at clause 9.9:

"IRRITANCY- RIGHT OF RE-ENTRY

...

For the landlord to commence legal proceedings to repossess the premises based on a breach of the tenancy (where the tenant had failed to remedy the breach in good time), which might result in the Court evicting the tenant or issuing a court order terminating the tenancy earlier than might otherwise be lawful, the law requires that the tenancy agreement contains an Irritancy Clause. Clause 9.9.1 is such a clause.

...

9.9.1 If at any time the rent, or any part of the rent, shall remain unpaid for 14 days after becoming due, whether formally demanded or not, or if any major or material agreement or major or material obligation on the tenant's part is not complied with, or if any of the circumstances mentioned in the following

Grounds:"

The Lease then quotes *verbatim* several grounds from schedule 5 to the Act, including grounds 8, 11 and 12. The sentence begun in clause 9.9.1 is not finished.

- Reasons for Decision

5. The Tribunal considered that ground 8 of schedule 5 to the Act was clearly made out. The notice of proceedings had been correctly served in terms of s.19 of the Act. On reflection, and having been addressed on the matter by the Applicant's representative, the Tribunal considered that the requirements of s.18(6)(b) were met by clause 9.9 of the Lease. While 9.9.1, in the form in which it appears, does not describe explicitly the consequences of any of the failures it lists, it is clearly denoted as an irritancy clause and the effect of such a clause described. Although undoubtedly poorly drafted, it does

therefore make provision for the tenancy to be brought to an end on the basis of grounds 8, 11 and 12 (among others).

On this basis, the Tribunal must grant the order for possession in terms of s.18(3) of the Act.

6. The Applicant also made a request for expenses to be awarded in his favour, on the basis that the Respondents' behaviour in not lodging a written defence, or intimating (in the case of the second Respondent) that she would attend the hearing, was unreasonable. The Tribunal did not consider that such behaviour was unreasonable and the application for expenses was refused.

- Decision

Order for recovery of possession granted.

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.

Nairn Young

Legal Member/Chair

28 SEPTEMBER 2018
Date