



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
2014**

Chamber Ref: FTS/HPC/EV/18/1711

Re: Property at 12 Afton Road, Fraserburgh, EH43 9PW (“the Property”)

Parties:

Mr Fraser Robertson, 11 Argyll Road, Fraserburgh, AB43 9RF (“the Applicant”)

**Miss Pamela Duthie, 12 Afton Road, Fraserburgh, EH43 9PW (“the
Respondent”)**

Tribunal Members:

Helen Forbes (Legal 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 in favour of the Applicant.**

Background

The Applicant made an application to the Tribunal under Rule 65 of the First-tier
Tribunal for Scotland Housing and Property Chamber (Rules of Procedure)
Regulations 2017 (“the Rules”).

The Applicant sought an order for possession of the Property on Grounds 11 and 12
as set out in Schedule 5 of the Housing (Scotland) Act 1988.

On 8th October 2018, Sheriff Officers served papers on the Respondent together with
notification that a case management discussion would take place at 11.30 on 24th
October 2018 at Riverside House, 502 Gorgie Road, Edinburgh. On 12th October
2018, a letter was served upon the Respondent by Sheriff Officers informing her that
the venue had changed to Ferryhill Community Centre, Albury Road, Aberdeen,
AB11 6TN, at the same time and on the same date as previously notified.

The Tribunal had before it the following papers:

- Short Assured Tenancy between the parties commencing on 9th January 2016
- Form AT5 dated 9th January 2016
- Form AT6 dated 22nd June 2018
- Notice to Quit dated 22nd June 2018
- Recorded Delivery slip dated 22nd June 2018
- Section 11 Notice to Local Authority dated 13th July 2018
- Rent Statement
- Correspondence between the Tribunal and the Applicant's agent in respect of certain defects identified in the Form AT6

Case Management Discussion

The Applicant was in attendance, representing himself. The Respondent was not in attendance. The Tribunal considered the terms of Rule 29 before proceeding. The Tribunal was satisfied that the requirements of Rule 24(1) had been complied with and that reasonable notice of the date, time and place of the hearing, and the changes to the place of the hearing, had been given to the Respondent. The Tribunal decided to proceed with the application upon the representations of the Applicant and all the material before it.

The Applicant informed the Tribunal that there had been no contact from the Respondent since proceedings were started. The rent due is £600 per month. The Respondent lives at the Property with her partner, and has done so since the start of the tenancy. She is the sole tenant. As far as the Applicant is aware, the Applicant was not in employment at the start of the tenancy and she was in receipt of housing benefit. There does not appear to have been any payment of housing benefit since July 2016, and the Applicant believes that the Respondent is now in employment. Her partner lost his job some time ago, and that was when difficulties in paying the rent began. The Applicant believes that the Respondent's partner is now in employment. Rental payments have been sporadic over a period of two years. The Form AT6 and Notice to Quit were served on 22nd June 2018, and the Applicant has made no payments since then. She has previously made lump sum payments of £1000 on 21st August 2017 and £1400 on 8th January 2018; however, she has made no payment of rent since 13th June 2018, when she made payment of £700. The rent arrears were £1594 at the time of lodging the action. The rent arrears are now £4354.

As far as the Applicant is aware, the Respondent does not have any children living with her. The Applicant is not aware that the delay or failure to pay rent is due to any delay or failure in payment of relevant housing benefit or universal credit.

The Form AT6 was served by the Applicant's agent. The relevant grounds were inserted into the AT6; however, they were not set out in full, and there was no date inserted into the AT6 at the relevant place, to inform the Respondent of the date after which proceedings may be raised. The Applicant did not have any submissions to make in terms of the defects in the Form AT6, other than to rely on his agent's

written representations that the Tribunal should consider whether it is reasonable to dispense with the requirement of such a notice by virtue of s19(1)(b) of the 1988 Act.

Findings in Fact

- The parties entered in a Short Assured Tenancy which commenced on 9th January 2016.
- A Notice to Quit was served on the Respondent by recorded delivery post on 22nd June 2018.
- A form AT6 was served on the Respondent by recorded delivery post on 22nd June 2018.
- The form AT6 was defective in that the Grounds upon which the Applicant was relying, namely Grounds 11 and 12, were inserted at Part 2 of the Notice, but particulars of the Grounds were not set out in full, and there was no date inserted into the AT6 at Part 4, to inform the Respondent of the date after which proceedings may be raised. The Grounds were set out in full in the Notice as part of the Notes for Landlords.
- It is reasonable to dispense with the requirement to serve a Form AT6 in accordance with section 19 of the 1988 Act.
- The Respondent has failed to make payment of rent lawfully due.
- The Applicant is entitled to possession of the Property in terms of Grounds 11 and 12.

Reasons for Decision

The Tribunal decided to dispense with the requirement to serve a Form AT6 in accordance with section 19 of the 1988 Act, as it was considered reasonable in the circumstances to dispense with the requirement. A Notice to Quit had been served. The Respondent was aware of the nature of the action and the fact that rent lawfully due had not been paid. The Respondent was provided with an opportunity to make written representations by a letter from the Tribunal dated 5th October 2018. The Respondent did not make any representations and did not appear at the case management discussion.

The Tribunal granted the Order on the basis that 1) Grounds 11 and 12 were met, in that the tenant has persistently delayed paying rent which has become lawfully due and rent lawfully due was unpaid on the date on which proceedings for possession were begun; and 2) it is reasonable to grant the Order.

In terms of reasonableness, the Tribunal considered that the Respondent was provided with an opportunity to make written representations by a letter from the Tribunal dated 5th October 2018. The Respondent did not make any representations and did not appear at the case management discussion, despite being informed in the said letter that the Tribunal may do anything at a case management discussion that it may do at a hearing. On the information available to the Tribunal, there was no issue in relation to payment of relevant housing benefit or universal credit that might affect the Applicant's ability to pay rent, in terms of section 18(4)(A) of the 1988 Act. The Respondent did not make any further payment of rent after being

served with a Notice to Quit. The arrears are at a high level. The Applicant is entitled to possession of the Property.

Decision

An order for possession of the Property should be granted in favour of 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.

H. Forbes

Legal Member/Chair

24th October 2018

Date