

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 (“the Act”)

Chamber Ref: FTS/HPC/EV/18/1661

Re: Property at 27 Ord Place, Muir of Ord, IV6 7TS (“the Property”)

Parties:

Mr Stephen Scott, Flat 2/2 Tyree Apartment, 5 The Square, Grantown on Spey, PH26 3HG (“the Applicant”)

Mr Raymond Macdonald, Ms Ruth Burnett, 27 Ord Place, Muir of Ord, IV6 7TS (“the Respondents”)

Tribunal Members:

Helen Forbes (Legal Member) and Leslie Forrest (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted to the Applicant.

Background

By application dated 2nd July 2018 the Applicant applied to the First-tier Tribunal under Rule 64 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations. The application was accompanied by a copy of the tenancy agreement which commenced on 10th December 2016; Forms AT6 in terms of section 19 of the Act dated 6th June 2018, relying on Grounds 8, 11 and 12 in Parts I and II of Schedule 5 to the Act; certificates of service of the Forms AT6 on both Respondents dated 7th June 2018; statement of arrears; and section 11 notice to the Local Authority served on 2nd July 2018.

The Hearing

The Applicant was present and was represented by Ms Laura McCarthy, Solicitor. Both Respondents were present.

Ms McCarthy submitted that an order for possession should be granted today in terms of Ground 8 in Part I of Schedule 5 to the Act. The Respondents were required, in terms of paragraph 4.1 of the tenancy agreement to make payment of rent in the sum of £450 per month. The Respondents had failed to pay the rent lawfully due. At the time of serving notice upon the Respondents, the arrears amounted to £2,125. At the time of making the application, the arrears amounted to £2,575. At the date of the hearing, the arrears amounted to £3,925. Ground 8 was satisfied as at least three months rent lawfully due from the Respondents was in arrears at the time of serving the AT6 and at the date of the hearing. In all the circumstances, the mandatory Ground 8 applied, and the Tribunal had no discretion in the matter. An order should be granted.

The Respondents confirmed that the sum of £3,925 was outstanding. Ms Burnett said that Mr MacDonald had been in receipt of a disability benefit until around a year ago, at which time he had an assessment, and the benefit was stopped. That led to difficulties in paying the rent. Mr MacDonald said he is in receipt of Employment Support Allowance in the sum of £200 fortnightly. Ms Burnett is employed. The Respondents confirmed that they were not entitled to Housing Benefit, due to Ms Burnett's employment. There is no Universal Credit in payment. The Respondents confirmed that they understood the situation, and the mandatory nature of Ground 8.

Findings in Fact

1. The tenancy between the parties is a Short Assured Tenancy dated 25th November 2016, and commencing on 10th December 2016.
2. In terms of the tenancy agreement, rent in the sum of £450 per month was due to be paid by the Respondents to the Applicant.
3. The Forms AT6 and section 11 notice served by the Applicant were in order.
4. At the date of service of the Forms AT6 under section 19 of the Act, at least three months rent lawfully due was in arrears.
5. At the date of the hearing, at least three months rent lawfully due is in arrears.
6. The rent is not in arrears as a consequence of a delay or failure of relevant Housing Benefit or Universal Credit, in terms of section 18(3A) of the Act.

Reasons for Decision

At the date of service of the Forms AT6 under section 19 of the Act, and at the date of the hearing, at least three months rent lawfully due by the Respondents to the Applicant was in arrears. In terms of Ground 8 the Tribunal has no discretion but to grant the order, given that the rent is not in arrears as a consequence of a delay or failure of relevant Housing Benefit or Universal Credit, in terms of section 18(3A) of the Act.

Decision

The Tribunal determined to issue an order for possession. The decision was unanimous.

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.

Helen Forbes

Legal Member/Chair

12th October 2018

Date