

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 33 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/18/2169

Re: Property at 90 Park Moor, Erskine, PA8 7HN (“the Property”)

Parties:

Mr John Welsh, Property Solutions Scotland, 38 Queen Street, Glasgow, G1 3DX (“the Applicant”)

Mr Richard Avery, 90 Park Moor, Erskine, PA8 7HN (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member)

Decision (in absence of the Respondent)

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

Background

An application was made by the Applicant for eviction of the Respondent from the property. Along with the Application the Applicant lodged:

1. Copy Tenancy Agreement
2. Copy Notice To Quit
3. Copy section 33 Notice
4. Copy AT6
5. Copy Rent Statement
6. Copy section 11 Notice

Case Management Discussion

The Applicant was represented by Joanna Millar of Millar Campbell, Solicitors. In attendance also were Margaret Welsh, John Clark and Carol Clarke of Property Solutions Scotland. The Respondent did not appear and was not represented.

The Chairperson introduced herself and explained the purposes of a Case Management Discussion in terms of Rule 17 of the First-tier tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules").

Miss Millar submitted that eviction should be granted in terms of Grounds 8, 11 and 12 of Part 1 of Schedule 5 of the Housing (Scotland) Act 1988. She said that the Respondent had been given every opportunity by the Applicant but had not paid anything towards rent for many months, and had not engaged at all since service of the notices. He was now in arrears to the extent of £6288.07. He was also in receipt of Housing Benefit, paid at the rate of £379.68 per four weeks, and accordingly there was no question of a delay in the processing of an application for, or payment of, benefits contributing to the arrears.

Findings In Fact

1. The Applicant and the Respondent entered in to a Tenancy Agreement for the property at 90 Park Moor, Erskine.
2. The Notice To Quit and AT6 had been served correctly on the Respondent.
3. The Respondent is in arrears of rent in the amount of £6288.07 at the date of the Case Management Discussion.

Reasons for Decision

In terms of the Findings In Fact the Applicant has satisfied the Tribunal that he has grounds for evicting the Respondent, being grounds 8, 11 and 12 of Part 1 of Schedule 5 of the Housing (Scotland) Act 1988.

Miss Millar asked for the expenses of the Application in terms of Rule 40 of the Rules. She submitted that by his lack of response to contact, to the service of the notices, and to the service of the Application the Respondent had, by his unreasonable behaviour in the conduct of the case, put the other party to unreasonable expense.

The Tribunal refused the motion for expenses. There was nothing unusual about the Application, and the fact that the Respondent had not engaged could not be described as unreasonable behaviour. The statutory wording of the AT6 form clearly states at Note 6:

"NOTE 6 TO TENANT

REMEMBER BEFORE YOU LEAVE YOUR HOME, YOUR LANDLORD MUST HAVE DONE 3 THINGS:

1. **SERVED ON YOU A NOTICE TO QUIT (NOTE CAREFULLY THAT THIS MAY HAVE BEEN SERVED AT AN EARLIER STAGE IN THE TENANCY**

- TO CHANGE THE TENANCY FROM A CONTRACTUAL TO A
STATUTORY ASSURED TENANCY); AND
2. SERVED ON YOU AN AT6 (THIS NOTICE); AND
 3. OBTAINED A COURT ORDER

It would not be equitable to grant expenses in the circumstances.

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.

Alison Kelly

Legal Member/Chair

10/12/18

Date