



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 1988 Act”)

Chamber Ref: FTS/HPC/EV/18/0183

Re: Property at Flat 2/1, 15 Rowan Road, Dumbreck, Glasgow, G41 5BU (“the Property”)

Parties:

Mr Witek Bienkowski, 8 Larch Road, Glasgow, G41 5DA (“the Applicant”)

Ms Leslie McMahon, Ms Leslie McMahon, Flat 2/1, 15 Rowan Road, Dumbreck, Glasgow, G41 5BU; 123 Fleurs Avenue, Dumbreck, Glasgow, G41 5AR (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member)

Decision in absence of the Respondent

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

- **Background**

The Applicant presented an application to the Tribunal for an order for recovery of possession of the subjects. The Application was on the basis that the Respondent was in arrears of rent and had persistently delayed or failed to pay rent.

The application was supported by various documents. In particular:-

- a) a Notice to Quit,
- b) a notice in terms of s33 of the Housing (Scotland) Act 1988 and
- c) a notice in terms of s19 of the Housing (Scotland) Act 1988 – commonly referred to as a Form AT6.

Each notice had been dated 17 November 2017, served on the Respondent on 20 November 2017 and intimated, in relation to the Notice to Quit and the s33 notice, that vacant possession was required by 23 January 2018 and, in

relation to the s19 notice, that proceedings for recovery would not be raised before 23 January 2018.

The statutory period of notice required for each of said notices had been provided.

Proceedings were intimated upon the Respondent on 27 March 2018.

The Respondent answered the Application. She advised in her written submissions that:-

- a) She vacated the property on 30 October 2017 and returned the keys for the property to the Applicant;
- b) That all rent outstanding had been paid;
- c) That she was not willing to be in the same room as the Applicant;
- d) That the Applicant had behaved in ways with which she was not happy (although this did not relate to the basis of the application to the Tribunal and was of no relevance to the order being sought).

The Respondent made e mail contact with the Tribunal on Saturday 21 April 2018 advising that she would not be attending the Case Management Discussion.

- **The Hearing/Case Management Discussion**

The Applicant attended the Case Management Discussion.

The Respondent did not attend the Case Management Discussion.

The Tribunal was satisfied that, in terms of Regulation 24 of The First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the FTT regulations") that the Respondent had been given reasonable notice of the Case Management Discussion and, accordingly, that in terms of Regulation 29 of the FTT Regulations, the Tribunal could proceed on the basis of the representations of the Applicant and all other material before it, which included the Respondent's written answers.

The Applicant intimated that he still wished an order for recovery of possession. He advised that, despite the content of the Respondent's written answers to the Tribunal, she had advised him during January 2018 that she had not vacated the Property.

In relation to her assertion that she had paid all rent due, he produced to the Tribunal an extract decree from Glasgow Sheriff Court, granted on 12 March 2018 under court reference GLW-SG-7113-17, ordering the Respondent to make payment to The Applicant in the sum of £5,000. This was in relation to arrears of rent. The Court also awarded expenses of £100.

- **Findings in Fact**

1. The Applicant is the Landlord of the Property. The Respondent is the tenant;

2. The Respondent:-
 - a) as at the date of service of the s19 notice, and as at the date of the hearing, was at least 3 months in arrears of rent (ground 8 of Schedule 5 to the 1988 Act);
 - b) had persistently delayed paying rent which was lawfully due (ground 11 of Schedule 5 to the 1988 Act);
 - c) had arrears of rent on the date proceedings begun and as at the date the s19 notice was served (ground 12 of Schedule 5 to the 1988 Act);
 - d) was not in arrears due to any delay or failure in payment of housing benefit nor universal credit benefit.
3. The required notices in terms of the 1988 Act had been served timeously on the Respondent;

- **Reasons for Decision**

- a) The Respondent was in arrears of rent.
- b) She had persistently failed to pay rent.
- c) The Sheriff Court at Glasgow had recently granted an order against the Respondent for payment to the Applicant in the sum of £5,000 in relation to arrears of rent.
- d) In any event, the Respondent had advised the Tribunal that she had vacated the Property.

- **Decision**

An order for recovery of possession of Property should be 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.

Virgil Crawford

Legal Member/Chair

Date

23 April 2018