



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18(1) of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/22/3109

Re: Property at Flat 3/2, 744 Pollokshaws Road, Glasgow, G41 2AE (“the Property”)

Parties:

Mr Zahid Shafi, 52 Albert Road, Glasgow, G42 8DN (“the Applicant”)

Mr Marcel - Dan Hendrea and Mrs Aurelia Hendrea, both Flat 3/2, 744 Pollokshaws Road, Glasgow, G41 2AE; Flat 3/2, 744 Pollokshaws Road, Glasgow, G41 2AE (“the Respondents”)

Tribunal Members:

George Clark (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and granted an Order for Possession of the Property.

Background

By application, dated 29 August 2022, the Applicant sought an Order for Possession of the Property under Section 18 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Ground relied on was Ground 8 of Schedule 5 to the 1988 Act, namely that both at the date of service of Notice under Section 19 of the 1988 Act relating to the proceedings and at the date of the Hearing, at least three months’ rent lawfully due from the Tenant is in arrears.

The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Parties commencing on 13 October 2017 and, if not terminated on 12 April 2018, continuing until terminated by two months’ notice given by either Party to the other. The rent payable was £450 per month. The Applicant also provided copies of a Rent Statement showing arrears as at 12 September 2022 of £4,656.69, no rent

having been paid since February 2022, a Form AT6 Notice dated 26 April 2022, advising the Respondent that the Applicant intended to raise proceedings for possession under Ground 8 of Schedule 5 to the 1988 Act and that proceedings would not be raised before 11 May 2022, and a Notice to Quit, also dated 26 April 2022, requiring the Respondents to vacate the Property by 11 May 2022. On 9 November 2022, the Applicant's letting agents provided a statement confirming that both Notices had been given to the Respondents personally in their office on 26 April 2022, but that the reference to an AT6 Notice had been inadvertently omitted from the signed acknowledgment of receipt by the Respondents.

On 10 February 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 3 March 2022. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the morning of 16 March 2023. The Applicant was represented by Mr Imran Haq, of G4 Properties, Glasgow. The Respondents were not present or represented. Mr Haq advised the Tribunal that the rent arrears currently stand at £6,026.69 and that it appeared that the Respondents were no longer living in the Property but had engaged in an unauthorised sub-let.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

Section 18(1) of the Act states that the Tribunal shall not make an Order for Possession of a house let on an Assured Tenancy except on one or more of the Grounds set out in Schedule 5 to the Act. By Section 18(3) of the Act, if the Tribunal is satisfied that any of the Grounds in Part I of Schedule 5 is established, the Tribunal shall make an Order for Possession. The present application is made under Ground 8 of Part I of Schedule 5.

Ground 8 of Schedule 5 to the 1988 Act, as amended by the Coronavirus (Scotland) Act 2020 provides that the Tribunal may grant an Order for Possession if, both at the date of the service of the Notice required under Section 19 of the 1988 Act (the Form AT6 Notice) and at the date of the Hearing at least three months' rent lawfully due from the tenant is in arrears and the Tribunal is satisfied that it is reasonable to grant the Order.

The Tribunal was satisfied that, both at the date of service of the Form AT6 Notice and at the date of the Case Management Discussion the arrears of rent lawfully due by the Respondent to the Applicant exceeded three months.

The Tribunal noted that no rent had been paid since February 2022 and that the arrears now stand at over £6,000. It appeared that the Respondents are no longer

living in the Property and may have sub-let it without prior written consent from the Applicant and without remitting to the Applicant any part of any rent that they are receiving.

Having carefully considered all the evidence before it, the Tribunal decided on balance that it would be reasonable to grant an Order for Possession of the Property.

The Decision of the Tribunal 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.



Legal Member/Chair

16 March 2023
Date