



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

Chamber Ref: FTS/HPC/EV/21/0742

Re: Property at 197 Curtis Avenue, Glasgow, G44 4NW (“the Property”)

Parties:

Mr Saddiq Mohammed, 191 Titwood Road, Glasgow, G41 4BJ (“the Applicant”)

Ms Susan O’Neill, 197 Curtis Avenue, Glasgow, G44 4NW (“the Respondent”)

Tribunal Members:

Josephine Bonnar (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 should be granted against the Respondent in favour of the Applicant.

Background

1. By application dated 22 March 2021, the Applicant seeks an order for possession in terms of Section 18 Housing (Scotland) Act 1988. (“the 1988 Act”) A copy tenancy agreement, AT6 Notice, Notice to Quit, Sheriff officer certificate of service, Section 11 Notice and rent statement were lodged in support of the application. The application and AT6 state that recovery of possession is sought on grounds 8,11 and 12 of schedule 5 of the 1988 Act.
2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer on 13 April 2021. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 14 May 2021 at 10am by telephone conference call. They were provided with a telephone number and passcode and advised that they were required to participate. On

12 May 2021, the Applicant lodged an updated rent statement.

3. The CMD took place on 14 May 2021 at 10am. The Applicant was represented by Ms Caldwell. The Respondent did not participate and was not represented. She did not contact the Tribunal in advance of the CMD to advise that she would not attend or lodge written representations .

Case Management Discussion

4. Ms Caldwell advised the Legal Member that neither she nor the Applicant have had any direct contact with the Respondent. She has received correspondence from a solicitor which indicated that the solicitor was providing the Respondent with advice but would not be representing her at the CMD. Ms Caldwell referred the Legal Member to the updated rent statement which shows that the arrears started in August 2015 and that £33,365.22 is currently outstanding. No payments to the rent account have been made since March 2017. In 2016, the Applicant applied to the DWP for the Respondent's housing benefit to be paid direct to the Applicant, as she was in receipt of this benefit but failing to pass it on. The subsequent payments made to the rent account all came from the DWP. Since March 2017, no further payments have been received. The Applicant does not know whether the Respondent is currently working or in receipt of benefits, such as housing benefit or universal credit. All attempts by the Applicant to communicate with the Respondent regarding the arrears have been unsuccessful. The Applicant has also been unable to get access to the property and lodged a right of entry application with the Tribunal. The Tribunal recently notified the Respondent of a date on which she was to provide access. However, she responded by stating that she would not do so. The Applicant is therefore unaware of the current condition of the property. The Applicant has no information about the Respondents personal circumstances, due to the lack of contact, but believes that she resides at the property alone. He has received complaints from neighbours about a dog at the property. This is a breach of the tenancy agreement which states that there are to be no pets.
5. Ms Caldwell advised the Legal Member that the Applicant served notices on the Respondent in 2016 but did not follow this up with court action when she failed to vacate the property. An application for an eviction order was lodged with the Tribunal in 2019 but was rejected. Due to personal circumstances, the Applicant did not instruct Ms Caldwell to raise the present application until recently. He has advised her that the high arrears have caused stress and financial problems for him. Since October 2020, the Applicant has issued several letters to the Respondent in order to comply with the pre action requirements which were introduced. These were issued on 23 October, 5 November, 16 November, and 27 November. In these letters the Applicant has confirmed the current rent charge and level of arrears and provided his contact details should the Respondent wish to discuss the matter with him. Links were provided to the Scottish Government website and other sources of advice,

including the CAB and Shelter. The Respondent has not replied to any of these letters. An offer of repayment was received from her solicitor of rent plus £50 per month. However, as the arrears have reached £33,365 this would take 55 years to repay. This offer was therefore rejected.

Findings in Fact

6. The Applicant is the owner and landlord of the property.
7. The Respondent is the tenant of the property in terms of an assured tenancy agreement dated 22 August 2015.
8. The Respondent is due to pay rent at the rate of £550 per month.
9. The Respondent owes the sum of £33,365 in unpaid rent to the Applicant.
10. The Applicant served a Notice to Quit and AT6 Notice on Respondent on 27 August 2020.

Reasons for Decision

11. The application was submitted with an assured tenancy agreement and AT5 Notice. The term of the tenancy 22 August 2015 to 22 February 2016. There is no provision for it to continue on a month-to-month basis, or otherwise. It therefore appears that the tenancy has continued by tacit relocation with an ish on the 22 August and 22 February each year after the end of the initial term. The Applicant served a Notice to Quit on the Respondent on 27 August 2021, by Sheriff Officer. The Notice to Quit calls upon the Respondent to vacate the property on 22 February 2021, which is an ish. It contains the information prescribed by the Assured tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and complies with the terms of Section 112 of the Rent (Scotland) Act 1984. The Legal Member is satisfied that the Notice to Quit is valid and that the tenancy contract has been terminated. The Applicant also served an AT6 Notice on the Respondent on 27 August 2020, also by Sheriff Officer. This is in the prescribed format and specifies grounds 8, 11 and 12. The Notice states that the earliest date that proceedings can be taken is 1 March 2021. The Notice therefore gives the required period of Notice as specified in Section 19(4) of the 1988 Act, as amended by the Coronavirus (Scotland) Act 2020. A copy of a section 11 Notice in the prescribed format has also been lodged, together with a copy of an email sending it to the Local Authority. The Legal member is satisfied that the Applicant has complied with Sections 19 and 19A of the 1988 Act.

12. Section 18 of the 1988 Act, as amended, states -

(1) The First-tier 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 this Act.

(2) The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.

(3B) Subsection (3C) applies where the First-tier tribunal is satisfied –

- (a) That ground 8 in schedule 5 is established, and
- (b) That all or part of the rent in respect of which the tenant is in arrears as mentioned in that ground relates to the period during which paragraph 4 of schedule 1 of the Coronavirus (Scotland) Act 2020 is in force.

(3C) Where this subsection applies, in considering for the purposes of subsection (4) whether it is reasonable to make an order for possession against the tenant, the First-tier Tribunal is to consider the extent to which the landlord has complied with pre action requirements before raising the proceedings for possession.

(4) If the First-tier Tribunal is satisfied that any of the grounds in Part i or Part ii of Schedule 5 to this Act is established, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

(4A) In considering for the purposes of subsection (4) above whether it is reasonable to make an order for possession on ground 8 in part I of schedule 5 to this Act or ground 11 or 12 in part ii of Schedule 5 to this Act, the First-tier Tribunal shall have regard, in particular, to the extent to which any delay or failure to pay rent taken into account by the Tribunal in determining that the ground is established is or was a consequence of a delay or failure in the payment of relevant housing benefit or universal credit.

13. Part 1 of Schedule 5 of the 1988 Act states, “Certain grounds on which First-tier Tribunal may order possession in relation to the period of the Coronavirus (Scotland) Act”. Ground 8 of Schedule 5 states, “Both at the date of the service of the notice under section 19 of this Act relating to the proceedings for possession and at the date of the hearing or the date of the case management discussion, whichever is the earlier, at least three months’ rent lawfully due from the tenant is in arrears.”

14. From the application form, the documents submitted with the application, and the information provided at the CMD by the Applicant’s representative, the Legal Member is satisfied that the Respondent stopped paying rent in March 2020 and currently owes over £33000 in unpaid rent. The Legal Member is therefore satisfied that at least three months rent lawfully due from the Respondent was in arrears at the date of service of the AT6 Notice and the date of the CMD. As the Applicant has established ground 8 of Schedule 5, the Legal member did not require to consider grounds 11 and 12.

15. The Legal Member noted that the Applicant does not know whether the Respondent is working or in receipt of benefits. The Respondent did not participate in the CMD or lodge written representations. The Respondent was

in receipt of benefits until 2017. However, there is no information available to the Tribunal which indicates that the rent arrears are due to a failure or delay in the payment of a relevant benefit.

16. The application states that the Applicant has complied with pre-action requirements. The Respondent did not provide any information to the Tribunal which contradicts this statement. The Legal Member is satisfied from the information provided at the CMD by the Applicant's representative, that the Applicant has issued letters to the Respondent which comply with the pre action requirements referred to in section 3C of the 1988 Act and specified in the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
17. The Legal Member notes that the arrears have exceeded £33000, and that the Respondent has failed to pay any rent since March 2017. This has caused the Applicant considerable stress and financial difficulty. There have also been complaints regarding the Respondent's dog, which she is not entitled to have at the property in terms of the tenancy agreement. The Legal Member also notes that the Respondent has failed to communicate with the Applicant or allow access to the property. As the Respondent has failed to participate in the CMD or provide information to the Tribunal in advance of it, no other information about the Respondent's circumstances is available. Having regard to all the information available, and to the issues of benefits and pre-action requirements referred to in paragraphs 12 and 13, the Legal Member is satisfied that it would be reasonable to grant the order for possession.
18. As the Applicant has complied with the requirements of the 1988 Act, and as the Legal Member is satisfied that it would be reasonable to grant an eviction order, the Legal Member determines that an order for possession should be granted.

Decision

19. The Legal Member determines that an order for possession of the property should be granted against the Respondent.

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.



Josephine Bonnar, Legal Member

14 May 2021