



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/21/2844

Re: Property at Flat 1/2, 12 Whitefield Road, Glasgow, G51 2YD (“the Property”)

Parties:

Mr Mohammad Murtaza, 6 West Vows Walk, Kirkcaldy, KY1 1RX (“the Applicant”)

Mr Howard Fitzpatrick, Address Unknown, Address Unknown (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for possession of the property and the removal of the Respondent from the property.

Background

1. By application dated 16 November 2021 the Applicant’s representatives Whyte Fraser & Co, Solicitors, Motherwell, applied to the Tribunal for an order for possession of the property under Ground 15 of Schedule 5 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Applicant’s representatives submitted Form AT6, Notice to Quit, Certificates of Service, and emails from neighbours relating to anti-social behaviour in support of the application.
2. By Notice of Acceptance dated 20 December 2022 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD on the Respondent by Sheriff Officers was unsuccessful as it was found that he was not living at the property. A CMD assigned for 9 February 2022 was adjourned and intimation of a further CMD was intimated to the Respondent by advertisement on the Housing and Property Chamber website.
4. A CMD was held by teleconference on 20 April 2022. Neither party was in attendance and it was adjourned and a Direction issued to the Applicant's representative.
5. By email dated 5 May 2022 the Applicant's representatives apologised for failing to attend the CMD on 20 April 2022 and explained this was due to an administrative error.
6. Intimation of the adjourned CMD was given to the Respondent by way of advertisement on the Housing and Property Chamber website conform to Certificate of Advertisement dated 11 July 2022.

The Case Management Discussion

7. A CMD was held by teleconference on 11 July 2022. The Applicant did not attend but was represented by Mr Alastair Buttery from the Applicant's representatives. The Respondent did not attend nor was he represented. Intimation having been given to him by way of advertisement on the Housing and Property Chamber website, the Tribunal determined to proceed in his absence.
8. The Tribunal queried if anything further was known of the Respondent's whereabouts. Mr Buttery explained that he had spoken to the Applicant's wife who had told him that on 25 March 2021 she had received a call from the police asking her to secure the door at the property as it had apparently been forced open by the police who had arrested the Respondent. Mr Buttery went on to say that subsequently when the police had returned to the block to take statements from neighbours the Respondent had returned to the property and had been re-arrested. Mr Buttery surmised that the Respondent had possibly been charged with an offence and then granted bail but with a special condition not to return to the area and when he had, he had then been remanded in custody. Mr Buttery went on to say that the Applicants when securing the door had installed a new lock and since that time the Respondent had not made contact with him to ask for a key to gain entry. He thought it likely therefore that the Respondent was serving a custodial sentence. Mr Buttery referred the Tribunal to the witness statement of Mr Phil Eaglesham that indicated that the Respondent had been charged with assault of a neighbour with a machete and thought that this could result in a lengthy prison sentence.
9. The Tribunal noted that the Applicant was unable to produce a tenancy agreement and that there appeared to be some confusion as to exactly when

the tenancy commenced but that it was not in doubt that there was an Assured Tenancy in place.

10. The Tribunal noted that the Respondent had been served by Sheriff Officers with a form AT6 and notice to Quit on 25 June 2021.
11. The Tribunal also noted that a Section 11 notice had been sent to Glasgow City Council advising them of the proceedings.
12. Mr Buttery referred the Tribunal to the statement submitted by Christie ODonnell-Vernall, Phil Eaglesham and Gerald McCambridge and submitted that together these showed that the Respondent had committed offences punishable by imprisonment and had been guilty of conduct in and in the vicinity of the property which was a nuisance to his neighbours. Mr Buttery went on to say that an order for possession was necessary for the protection of the Respondent's neighbours. He also explained that the Respondent had accrued rent arrears over several years and had caused damage both to the applicant's property and allowed a leak from the property to cause damage to the downstairs neighbour's property. Taking everything into account, Mr Buttery submitted that it was reasonable to grant the order sought.

Findings in Fact

13. The parties entered into an assured tenancy agreement in respect of the property.
14. The Respondent was served with a Form AT6 and Notice to Quit by Sheriff Officers on 25 June 2021.
15. The Respondent is not living in the property and has not done so since some time in 2021.
16. The Respondent has engaged in conduct that has caused a nuisance and annoyance to neighbours and has been convicted of criminal offences that have involved custodial sentences.

Reasons for Decision

17. Although it seemed likely that the Respondent was serving a prison sentence the Tribunal was unable to conclude that was definitely the case. It was possible the Respondent had simply not returned to the property following his time on remand. The Tribunal was however satisfied that the Respondent had been charged with a serious offence, that of an assault with a machete on a neighbour. The Tribunal was also satisfied from the lengthy witness statements, particularly those of Ms ODonnell-Vernall and Mr Eaglesham that the Respondent had over many years conducted himself in a manner that was totally unacceptable. The Tribunal was satisfied that the Respondent had

criminal convictions that had resulted in custodial sentences and that he had caused his neighbours substantial distress.

18. Although the Applicant was unable to provide a copy of a tenancy agreement the Tribunal was satisfied that there was an Assured tenancy in place given the length of time the Respondent had lived in the property. The Tribunal was unable to ascertain exactly when the Respondent ceased to occupy the property but it appeared that the Form AT6 and Notice to Quit had been properly served on the Respondent by Sheriff Officers. The Tribunal was therefore satisfied that procedurally the application was valid.

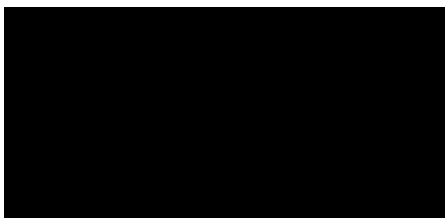
19. The Tribunal took account of the submissions by Mr Buttery with regards to it being reasonable to grant the order sought and given the conduct exhibited by the Respondent towards his neighbours over a long period, his criminal behaviour, his failure to pay rent and his current failure to occupy the property the Tribunal was satisfied that it was in all the circumstances reasonable to grant the order sought.

Decision

20. The Tribunal having carefully considered the oral submissions made on behalf of the Applicant together with the documentation submitted was satisfied it had sufficient information before it to make a decision without the need for a hearing and determined that the Applicant was entitled to an order for possession of the property and the removal of the Respondent from the property under Ground 15 of Schedule 5 of the 1988 Act.

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.



**Graham Harding
Legal Member/Chair**

**11 July 2022
Date**