



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/23/0561

Re: Property at Flat 4, 38 Falkirk Road, Bonnybridge, FK4 1BD (“the Property”)

Parties:

C-urb 6 Ltd, (formerly Link Housing Association Limited t/a Link2Let), Link House 2C New Mart Road, Edinburgh, EH14 1RL (“the Applicant”)

Mr John Coogan, Flat 4, 38 Falkirk Road, Bonnybridge, FK4 1BD (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Helen Barclay (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 22 February 2023 and subsequently as amended on 5 May 2023 the Applicant’s representatives, Harper Macleod LLP, Solicitors, Glasgow, applied to the Tribunal for an order for possession and the removal of the Respondent from the property under Grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 (“the 1988 Act”) in respect of alleged rent arrears arising from the Respondent’s tenancy of the property. The Applicant’s representatives submitted a copy of the tenancy agreement together with a rent statement, Form AT6 and Notice to Quit with proof of service and a Section 11 Notice with proof of intimation in support of the application.

2. By Notice of Acceptance dated 19 July 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. The Applicant’s representatives submitted further written representations by email dated 3 August 2023.
4. Intimation of the CMD was served on the Respondent by Sheriff Officers on 1 September 2023.
5. By email dated 22 September 2023 the Applicant’s representatives submitted further written representations by way of an amended rent statement.

The Case Management Discussion

6. A CMD was held by teleconference on 15 February 2023. The Applicant was represented by Ms Gillian Halas and from the Applicant’s representatives, Ms Keri Preece. The Respondent did not attend nor was he represented. The Tribunal being satisfied that proper intimation had been given to the Respondent determined to proceed in his absence.
7. The Tribunal noted that the Applicant’s representatives had submitted a copy of an agreement between Link Group Limited and the Applicants confirming the arrangements whereby the Applicants had assumed title and interest to the property thus satisfying the queries raised by the Tribunal during the sifting process.
8. The Tribunal also noted that the Applicant’s representative wished the Tribunal to exercise its discretion in terms of Section 19 of the 1988 Act and Rule 14(1) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) to allow an additional ground for possession namely Ground 8A as introduced by the Cost of Living (Tenant Protection) (Scotland) Act 2022 (“the 2022 Act”) to be added to the application. The Tribunal noted the Form AT6 had been served on the Respondent on 8 September 2022 and the 2022 Act came into force on 28 October 2022. The Tribunal noted that the rent now due by the Respondent had risen to £13120.70. It also noted that the Respondent had not submitted any written representations opposing the proposed amendment or attended at the CMD and in the circumstances the Tribunal considered that it was reasonable to allow the additional ground and dispense with the need for service of a notice on the Respondent.

9. The Tribunal Noted that the Respondent had entered into a Short Assured Tenancy that had commenced on 4 April 2017. It also noted that Sheriff Officers had served a Notice to Quit and Form AT6 on the Respondent on 8 September 2022 and that the local authority had been given intimation of the proceedings by way of a Section 11 Notice by email on 22 February 2023.
10. The Tribunal queried with Ms Preece if the Applicant had complied with the pre-action requirements set out by the Scottish Government. Ms Preece explained that although no documents had been submitted, Ms Halas was able to provide the Tribunal with details of dates and the contents of the pre-action letters that had been sent to the Respondent. Ms Halas confirmed that pre-action letters in the form recommended by the Scottish government had been sent to the Respondent on 13 September 2021, 20 October 2021 and 14 June 2022. She said that the Respondent had been offered advice and support and had been directed to organisations such as the C.A.B. and Shelter and also the Applicant's own welfare rights division to assist with making an application for Universal Credit when he had been off work through ill health.
11. Ms Halas advised the Tribunal that numerous attempts had been made between 2020 and 2023 to contact the Respondent to try to agree a payment plan and for him to engage with the Respondent but that no payment had been made since October 2021 and that more recently it had proved difficult to gain access to the property when this had been required.
12. Ms Halas advised the Tribunal that She was aware the Respondent had been in hospital for a period in 2021 but attempts to assist him making an application for Universal credit had not been completed due to the Respondent turning down the offer of assistance. Ms Halas said that as far as she was aware the Respondent had returned to work as a domestic appliance electrical engineer and that he lived alone and was aged 49.
13. Ms Preece submitted that it was reasonable to grant an order under Ground 8A of the 1988 Act.

Findings in Fact

14. The Respondent entered into a Short Assured tenancy of the property on 4 April 2017.
15. The Respondent had accrued rent arrears at the date of service by Sheriff Officers of a form AT6 on 8 September 2022 amounting to £6887.51.
16. The Respondent was served with a Notice to Quit by Sheriff Officers on 8 September 2022.

17. Intimation of the proceedings was sent to Falkirk Council by email on 22 February 2023.
18. At the date of the CMD the Respondent owed rent of £13120.70.
19. The Applicant sent pre-action letters to the Respondent on 13 September and 20 October 2012 and 14 June 2022.
20. The Respondent lives alone in the property.

Reasons for Decision

21. The Tribunal was satisfied from the written representations and documents submitted that the Respondent entered into a Short Assured Tenancy that commenced on 4 April 2017 and endured until 9 October 2017 and from month to month thereafter. The tribunal was also satisfied that the Respondent had fallen into very substantial rent arrears and that by the time the Form AT6 and Notice to Quit was served on the Respondent by Sheriff Officers on 8 September 2022 more than three months rent was due.
22. For the reasons given above the Tribunal was satisfied that with the introduction of the 2022 Act on 28 October 2022 after service of the Form AT6 on the Respondent and the introduction of an additional Ground 8A that more than 6 months rent was due it was appropriate that the Tribunal exercise its discretion and allow the application to be amended to include that additional ground.
23. The Tribunal was satisfied from the information provided by Ms Halas that the Applicant had complied with its obligations in terms of the pre-action guidelines and that the Respondent had been given appropriate advice before proceedings were instigated.
24. The Tribunal took account of the very substantial level of rent arrears amounting to some 27 months' rent and the fact that despite being given an opportunity to submit written representations and to attend the CMD the Respondent had done neither. As far as the Tribunal was aware the Respondent was working and had no dependents living with him and in all the circumstances it was therefore reasonable to grant an order for possession under Ground 8A of Schedule 5 of the 1988 Act.

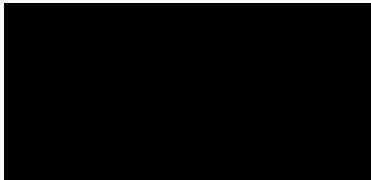
Decision

25. The Tribunal having carefully considered the information before it and being satisfied that it had sufficient information to make a decision without

the need for a hearing finds the Applicant entitled to an order for possession of the property and the removal of the Respondent from the property under Ground 8A 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 October 2023
Date**