



**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/20/0204**

**Re: Property at Middle Flat, 17 Telford Street, Inverness, IV3 5JZ (“the Property”)**

**Parties:**

**Hugh Allan Properties Limited, Ness Castle, Dores Road, Inverness, IV2 6DJ  
 (“the Applicant”)**

**Mr Louis MacKenzie, Middle Flat, 17 Telford Street, Inverness, IV3 5JZ (“the  
 Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member)**

**Decision**

**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 20 January 2020 the Applicant’s representatives, South Forrest, Solicitors, Inverness applied to the Tribunal for an order under Section 18(1) of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Applicant’s representatives submitted a copy of the lease, Notice to Quit, Form AT6, Recorded delivery slips, Sheriff Officers Certificate of Service, Section 11 Notice and Applicant’s affidavit.
2. By Notice of Acceptance dated 3 February 2020 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.
3. A Case Management Discussion was held by teleconference on 9 July 2020 and was adjourned in order that the Applicant could provide a full rent statement

from the date arrears began to accrue and showing all payments made by the Respondent and the DWP. The Respondent was also directed to submit evidence of Universal Credit or Housing Benefit payments received from the date arrears began to accrue.

4. The Applicant's representatives submitted a rent statement covering the period from 2014 to 28 July 2020 by email on 11 August 2020. The Respondent did not submit any documents to the Tribunal.

### **The Case Management Discussion**

5. A Case Management Discussion was held by teleconference on 21 August 2020. The Applicant was represented by Mr Smith of the Applicant's representatives. The Respondent attended personally.
6. The Respondent confirmed he had received a copy of the rent statement submitted by the Applicant's representatives and accepted that it accurately reflected the payments made by or on his behalf in respect of the rent due and also the rent due. The Respondent said that in addition he had made two further payments of £64.59 on 27 July and £50.00 on 11 August. He said it was his intention to continue to make additional payments of £50.00 per month towards the arrears if he could be allowed to stay in the property. He explained he was currently unemployed and in receipt of Universal Credit and if he gained employment, he would increase the amount he would pay towards clearing the arrears.
7. For the Applicant, Mr Smith acknowledged that the Respondent had made a payment of £64.59 on 27 July and this had been included on the rent statement submitted and he had no reason to doubt that the Respondent had made a further payment of £50.00.
8. The Respondent asked that he be allowed to remain in the property and be given time to clear the arrears. Mr Smith advised the Tribunal that his instructions were to seek the order for possession and the removal of the Respondent.
9. The Tribunal explained to the Respondent that Ground 8 of Schedule 5 of the Housing (Scotland) Act 1988 was a mandatory ground for recovery of possession and therefore if the Applicant could satisfy the statutory test then the Tribunal was obliged to grant the order sought. The Respondent indicated that he understood.
10. Mr Smith referred the Tribunal to the Tenancy Agreement and explained that the Applicant had inherited the tenancy when he purchased the property with the Respondent as a sitting tenant. Although the agreement purported to be a Short Assured Tenancy proceedings had not been raised under section 33 of the 1988 Act but under section 18.

11. Mr Smith referred the Tribunal to the Notice to Quit and submitted that this had created a statutory tenancy having met the minimum period of 40 days' notice. The Form AT6 set out the grounds on which possession was being sought. More than three months rent was due both at the date of service of the notice and at the date of the hearing and it was therefore a mandatory ground for possession.
12. Mr Smith referred the Tribunal to the letter of 21 January 2020 to Highland Council enclosing the Section 11 Notice and asked the Tribunal to grant the order sought.
13. The Respondent advised the Tribunal that he had lived in the property since 2006 and had always been happy there. He said he would like to continue to remain in the property and reach an agreement with the Applicant over payment of the arrears but accepted that he might have to leave. He accepted that more than three months' rent had been due at the date of service of the Form AT6 and at the date of the Case Management Discussion. He accepted he had received the Notice to Quit and the Form AT6. He did not dispute the sums said to be due.

### **Findings in Fact**

14. The Respondent entered into an Assured Tenancy Agreement with Mrs Angela Baker. The Tenancy commenced on 17 December 2006 and endured until 17 June 2007 and from month to month thereafter subject to either party giving one month's notice in terms of the agreement.
15. The Applicant became the Respondent's landlord when it purchased the property in 2012.
16. The rent due by the Respondent to the Applicant in respect of the property is £300.00 per month.
17. Between 2014 and the 3 September 2019 the Respondent accrued rent arrears of £3464.59
18. The Respondent was served with a Notice to Quit and a Form AT6 both by recorded delivery post and by Sheriff Officer on 5 September 2019.
19. Highland Council was given notice of these proceedings by virtue of a Section 11 Notice sent by recorded delivery post on 21 January 2020.
20. The Respondent has accrued rent arrears of £3650.00 as at the date of the Case Management Discussion.

### **Reasons for Decision**

21. The Tribunal was satisfied from the documents produced and the oral submissions of both Mr Smith and the Respondent that there was an assured

tenancy in which the Applicant was the Landlord and the Respondent the Tenant. The Tribunal was also satisfied that it was agreed that the rent was £300.00 per month and that the level of arrears was as shown on the rent statement submitted by the Applicant's representative less a further £50.00 paid to account by the Respondent.

22. The Tribunal was satisfied from the documents produced and the submissions made by Mr Smith that a statutory tenancy had been created by service of the Notice to Quit and that the Form AT6 seeking possession under Ground 8 of Schedule 5 of the 1988 Act was validly served on the Respondent.
23. The Tribunal was satisfied that proper intimation of the proceedings had been given to Highland Council by intimation of a Section 11 Notice.
24. The Tribunal noted that it was accepted by the Respondent that the rent arrears were not disputed by the Respondent and that it was accepted by him that more than three months rent had been due both at the date of service of the Notice and at the date of the Case Management Discussion.
25. The Tribunal was satisfied that the provisions of the Coronavirus (Scotland) Act 2020 did not apply as the Notice to Quit and Form AT6 had been served prior to the coming into force of that Act and therefore as Ground 8 of Schedule 5 was a mandatory ground as there was more than three months rent due both at the date of service of the Notice and at the date of the Case Management Discussion the Tribunal had to grant the order sought despite the wishes of the Respondent to make payments to account.

### **Decision**

26. The Tribunal having carefully considered the documents submitted on behalf of the Applicant together with the oral submissions of Mr Smith and the Respondent and being of the view that it had sufficient information before it to make a decision without the need for a hearing determined that the Applicant was entitled to an order for possession of the property and the removal of the Respondent from the property.

### **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

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**Legal Member/Chair**

**21 August 2020**  
**Date**