

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/EV/19/0861

**Re: Property at First Floor Flat - Right, 3 Pitkerro Road, Dundee, DD3 7ET ("the
Property")**

Parties:

**Executor Nominated of the late John McIntosh, c/o Miller Hendry, Solicitors, 13
Ward Road, Dundee, DD1 1LU ("the Applicant")**

**Ms Marjory Ingram, First Floor Flat - Right, 3 Pitkerro Road, Dundee, DD3 7ET
("the Respondent")**

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that**

1. An application was received by the Housing and Property Chamber on 14th March 2019. It was dated 13th March 2019. The application was submitted under Rule 111 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Regulations"). The application was based on the Respondent not adhering to grounds 8, 11 and 12 of the Housing (Scotland) Act 1988.
2. The application included:-
 - a) Notice to Quit dated 27th November 2018.
 - b) Copy AT6 dated 27th November 2018 raising grounds 8, 11 and 12 signed by the Applicants' solicitor.
 - c) Certificate of Service dated 28th November 2018 pertaining to the service of the Notice to Quit and the AT6.
 - d) Section 11 Notice pertaining to an assured tenancy.

3. The Tribunal also had before it a copy of the title deeds numbered ANG 58246.
4. On 3rd May 2019, a letter was received from the Applicant's solicitor advising that the tenancy start date was unknown though believed to be prior to the new Private Residential Tenancies. As such it is taken that the tenancy is an assured tenancy. A rent statement could not be provided due the landlord having died prior to instruction (the solicitor's firm has been dealing with the executory). It was noted in the letter that the rent charge was unknown but taken to be that which had been paid by Dundee City Council in Housing benefit. Up until 27th November 2017 payment has been made to the landlord of £304.60 which equates to £330 per month. On this basis, a calculation of rent due was made this totalled £5280 for the 16 month period that there had been no payments received.
5. A Notice of Acceptance of Application was signed on 17th May 2019.
6. On 30th May 2019, all parties were written to with the date for the Case Management Discussion ("CMD") of 3rd July 2019 at 10am at Caledonia House, Greenmarket, Dundee. The letter also requested all written representations be submitted by 21st June 2019.
7. On 3rd June 2019, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by letterbox service and first class post. This was evidenced by Certificate of Citation dated 3rd June 2019.
8. The case was conjoined with case FTS/HPC/EV/19/0861.

The Case Management Discussion

9. A CMD was held on 3rd July 2019 at 10am at Caledonia House, Greenmarket, Dundee. The Applicant was represented by Miss Katherine Glen, solicitor for the Applicant. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make representations in advance of the hearing. Miss Glen informed the Tribunal that the Respondent last paid a the Applicant's wife had been contacted by the Respondent on 25th June 2019 but her conversation had not be comprehensible. Dundee North Law Centre had also contacted Miss Glenn's firm to advise that the Respondent was willing to pay her own rental charge if she had a member of staff escort her from the Post Office where she holds a cash only account. This would need to be done on a monthly basis. This was not a service that Miss Glen's firm could offer. The letter also stated that the Respondent was not in a position to make payment to the arrears. Miss Glen informed the Tribunal that Mr McIntosh had died on 22nd June 2017. It is noted in the title deeds that the first registration of the Property in the Land Register was 11th August 2011. It is assumed that this is when Mr McIntosh became the owner of the property and that tenancy would have commenced as some point thereafter. To Miss Glen's knowledge, there were no outstanding Housing Benefit or Universal Credit Housing Element issues.

10. Miss Glen asked that the Property be detailed on the Order as Eastmost House of the 1st Floor, Tenement 3 Pitkerro Road, Dundee DD3 7ET also known as 1st Floor Flat Right, 3 Pitkerro Road, Dundee DD3 7ET.
11. Miss Glen stated that the Respondent had been persistently in arrears of £5280 from 27 November 2017 thereafter the arrears increased to the amount of £330 per month since the point of application.

Findings and reason for decision

12. The parties entered an Assured Tenancy. It is assumed that this is an assured tenancy as the lease as the AT5 has is not been able to be found and produced. The first registration of the Land Register was 11th August 2011. The rent payments of £304.60 per four weeks (paid by Dundee City Council's Housing Benefit department) ceased on or around 27th November 2017. It is assumed that housing benefit was being paid without a shortfall. No payments have been forthcoming since that date.
13. The Housing and Property Chamber received an Application on 14th March 2019.
14. The Respondents have persistently not made rent payments. There have been more than 3 missed payments. The amount outstanding has risen to £5280, beyond that which was sought in the application.
15. There are no outstanding Housing Benefit issues.
16. The arrears due to the Applicant amounts to £5280.

Decision

17. The Tribunal found that grounds 8, 11 and 12 have been established and the granted an order in favour of the Applicant. The Applicant is entitled to for an Order of for recovery of possession.

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.

GM

Legal Member/Chair

Date

3 July 19