

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(1) of the Housing
(Scotland) Act 1988 (hereinafter referred to as “the 1988 Act”) for Recovery of
Possession of a Short Assured Tenancy**

Chamber Ref: FTS/HPC/EV/19/2480

Re: Property: Newlands, Tulloch Road, Perth, PH1 2RW (“the property”)

Parties:

**Perthshire Glazing Company, Rosemary House, Inveralmond Industrial Estate,
Perth, PH1 3TW (“the Applicant”)**

**Miss Lesley Ogilvie, Mr Wayne Robertson, Newlands, Tulloch Road, Perth, PH1
2RW (“the Respondents”)**

Tribunal Members:

Karen Kirk (Legal Member)

This Case Management Discussion was fixed in terms of Rule 17 of the Procedure Rules and concerned an Application for Recovery of Possession under Section 18(1) of the Housing (Scotland) Act 1988. The purpose of the hearing was explained in terms of Rule 25 of the Procedure Rules.

Attendance and Representation

The Applicant was represented by Kirsty Morrison, TC Young Solicitors, 7 West George Street, Glasgow, G2 1BA

The Respondents both attended the Tribunal.

Preliminary Matters

Ms Morrison confirmed that whilst no AT5 had been lodged the tenancy was a Short Assured Tenancy as there was a valid AT5. She confirmed the Order was sought relying on Grounds 8, 11 and 12 of Schedule 5 of the 1988 Act as so the AT5 had not been lodged. The Legal Member thanked the Applicants representative for this clarification.

There were no other preliminary matters.

The Case Management Discussion

Ms Morrison confirmed that the Applicants sought an Order for Possession under section 18(1) of the 1988 Act, based on Grounds 8, 11 and 12 of Schedule 5 of this Act. In support of same she referred to the fact that more than 3 months rent arrears were due both at the date of service and at today's hearing, the rent arrears having continued to increase since the date of service. The AT6 and execution of service having been carried out timeously and contained within the Application Ms Morrison moved the Tribunal to grant the Order on the basis that Ground 8 was established leaving the Tribunal in her submission no discretion. The rent due amounted to at the date of the hearing £4550.00.

The Respondents advised in response that they had received the relevant notices and Application but that the arrears had accrued due to maternity leave and paternity leave issues following the birth of their child. This has resulted in a reduction of wages and income. The Respondents admitted the rent arrears and advised they had secured alternative housing.

Submissions

Ms Morrison confirmed that the Applicants sought an Order for Possession based on Ground 8, section 18(1) of the 1988 Act only. In support of same she referred to the fact that more than 3 months rent arrears were due both at the date of service and at today's hearing, the rent arrears having continued to increase since the date of service.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") granted an order against the Respondents for possession of the Property under section 18 of the Housing (Scotland) Act 1988.

Reasons for Decision

- 1. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property.**
- 2. The Tribunal was satisfied that the tenancy was in terms of Section 32(1) of the 1988 Act, a short assured tenancy for not less than 6 months and in relation to which a prescribed notice namely a valid AT5 had been served before creation of the short assured tenancy. The Respondent accepted that the AT5 had been served correctly at the outset of the tenancy. Same had not been lodged by the Applicants as they were relying on Grounds 8, 11 and 12 under Schedule 5 of the 1988 Act to make the Application.**
- 3. In terms of Section 18 (3A) the Tribunal was satisfied that the respondents were in arrears of rent lawfully due of £3250 as at 5th August**

2019, comprising of more than 3 months rent and further that Ground 8 of the 1988 Act is established given the said arrears of more than 3 months rent were due both at the date of service and at the date of the hearing. At the date of the hearing rent due was £4550.00

4. The relevant AT6 notice was valid and had been served by Sheriff Officer on 11th July 2019.
5. The Tribunal enquired as to the reasons for the non payment of rent and the reasons given were on relation to maternity leave and paternity leave affecting family income.
6. Accordingly in terms of Section 18 of the 1988 Act the Tribunal granted an Order against the Respondents for possession of 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.

Karen Kirk

Legal Member/Chair

28/10/19.

Date