



**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/19/2542**

**Re: Property at 85 Loreny Drive, Kilmarnock, KA1 4RH (“the Property”)**

**Parties:**

**Mr Richard Clyde, 49 Brone Road, Coleraine, Co Londonderry, BT51 4EQ (“the Applicant”)**

**Miss Jo Ann Boyle, 85 Loreny Drive, Kilmarnock, KA1 4RH (“the Respondent”)**

**Tribunal Members:**

**Virgil Crawford (Legal Member)**

**Decision (in absence of the Respondent)**

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

**Background**

1. By lease dated 10 February 2016 the Respondent leased the Property from the Applicant. The initial period of let was from 14 February 2016 until 15 August 2016. The lease continued by tacit relocation thereafter;
2. The rent payable was £450.00 per calendar month;
3. The Respondent initially fell in to arrears of rent during August 2016, the arrears at that point being £50.00. The arrears remained at that level until July 2018 at which point the arrears began rising, and continued to rise on a monthly basis;
4. An application for an order for eviction was received by the Tribunal on 14 August 2019. At that date the arrears amounted to £4,250.00;
5. The application sought an order for eviction only on the basis of Ground 8 of Schedule 5 to the Housing (Scotland) Act 1988 (“the 1988 Act”);
6. A Case Management Discussion was held on 11 October 2019. At that date the arrears had risen to £4,700.00;

## The Case Management Discussion

7. The Applicant did not attend the Case Management Discussion but was represented by Mr Stephen Spence of Lomond Estate Agents Ltd, Ayr;
8. The Respondent did not attend the Case Management Discussion. The Tribunal was in receipt of a sheriff officers' execution of intimation of the proceedings upon the Respondent on 6 September 2019. In the circumstances, the Tribunal, being satisfied in terms of Rule 24 of The First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 that notice of the date, time and place of the Case Management Discussion had been given to the Respondent, decided, in accordance with Rule 29 of the FTT Rules, to proceed in the absence of the Respondent;
9. The Tribunal had been provided with:-
  - a) A notice to quit dated 5 June 2019 requiring vacant possession on 22 July 2019;
  - b) A notice in terms of s19 of the 1988 Act – commonly referred to as a form AT6 – dated 5 June 2019, which notice gave notice to the Respondent that an application for eviction may be made on the basis of Grounds 8 and 11 of Schedule 5 to the 1988 Act and that proceedings would not be raised before 22 July 2019;
  - c) A certificate from sheriff officers confirming that the notice to quit and notice in terms of s19 of the 1988 Act were served upon the Respondent on 10 June 2019;
  - d) A notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 which had been intimated to the local authority;
  - e) A rent statement covering the period from August 2015 until 14 September 2019;

## Findings in Fact

10. The Tribunal found the following facts admitted or proved:-
  - i. By lease dated 10 February 2016 the Respondent leased the Property from the Applicant. The initial period of let was from 14 February 2016 until 15 August 2016. The lease continued by tacit relocation thereafter;
  - ii. The rent payable was £450.00 per calendar month;
  - iii. The Respondent initially fell in to arrears of rent during August 2016, and was continually in arrears thereafter;
  - iv. A notice to quit dated 5 June 2019 was served upon the Respondent on 10 June 2019;
  - v. A notice in terms of s19 of the 1988 Act dated 5 June 2019, which notice gave notice to the Respondent that an application for eviction may be made on the basis of Grounds 8 and 11 of Schedule 5 to the 1988 Act and that proceedings may be raised on or after 22 July 2019 was served on the Respondent on 10 June 2019;
  - vi. A notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 had been intimated to the local authority;
  - vii. An application for an order for eviction was received by the Tribunal on 14 August 2019. At that date the arrears amounted to £4,250.00;

- viii. The application sought on order for eviction only on the basis of Ground 8 of Schedule 5 to the Housing (Scotland) Act 1988 ("the 1988 Act");
- ix. A Case Management Discussion was held on 11 October 2019. At that date the arrears had risen to £4,700.00;
- x. As at the date of service of the notice under s19 of the 1988 Act, and as at the date of the Case Management Discussion, at least 3 months rent lawfully due from the Respondent was in arrears;

#### Decision

The Tribunal granted an order against the Respondent for possession of the Property under section 18 of the Housing (Scotland) Act 1988 and in terms thereof, grants order to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property at 85 Loreny Drive, Kilmarnock, KA1 4RH and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

The order is not to be executed prior to 12 noon on 18 November 2019

#### 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.

Virgil Crawford

11 October 2019

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Legal Member/Chair

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Date