



**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/19/3436**

**Re: Property at 23 Cherry Lane, Mayfield, Dalkeith, EH22 5LE (“the Property”)**

**Parties:**

**Ms Kristin Latimer, c/o Matrix Management Ltd, 132 St Stephen Street,  
Edinburgh, EH3 5AA (“the Applicant”)**

**Lindsays, Caledonian Exchange, 19A Canning Street, Edinburgh, EH3 8HE  
 (“the Applicant”)**

**Ms Kirsty Webster, 23 Cherry Lane, Dalkeith, EH22 5LE (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined to make an order for recovery of possession against the  
Respondent.**

- 1 By application dated 28 October 2019 the Applicant sought an order for repossession of the property against the Respondent. The Applicant submitted the following documentation in support of the application:-
  - (i) Copy Tenancy Agreement between the Applicant and Respondent dated 14<sup>th</sup> October 2010;
  - (ii) Form AT6 dated 20<sup>th</sup> September 2019 citing grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 and stating that proceedings would not be raised before 8<sup>th</sup> October 2019 together with proof of delivery by mail;

- (iii) Rent Statement; and
  - (iv) Section 11 Notice to Midlothian Council.
- 2 By Notice of Acceptance of Application dated 8<sup>th</sup> November 2019 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 23<sup>rd</sup> December 2019.
- 3 A copy of the application paperwork together with notification of the Case Management Discussion was served on the Respondent by Sheriff Officers on 21<sup>st</sup> November 2019.

### **The Case Management Discussion**

- 4 The Case Management Discussion took place on 23<sup>rd</sup> December 2019 at Riverside House, Edinburgh. Mr Adam Gardiner appeared on behalf of the Applicant's Agent. The Respondent did not attend. The Legal Member was satisfied that the Respondent had been properly served with the application paperwork and therefore determined to proceed with the Case Management Discussion in her absence.
- 5 Mr Gardiner confirmed that the arrears as at the date of the Case Management Discussion were £4221.05 and produced an up to date rent statement confirming that figure. On that basis the Applicant was seeking eviction, primarily under ground 8. Mr Gardiner confirmed that housing benefit was being paid but it did not cover the monthly rent. Payments had been erratic and there was no suggestion that any backdated payment was due that would clear the outstanding arrears.

### **Findings in Fact and Law**

- 6 The parties entered into a Short Assured Tenancy Agreement in respect of the property which commenced on 18<sup>th</sup> October 2010.
- 7 The Short Assured Tenancy Agreement makes provision at Clause 51 for the tenancy to be terminated on any of the grounds for repossession as set out in Schedule 5 of the Housing (Scotland) Act 1988 ("the 1988 Act").
- 8 In terms of the said Tenancy Agreement the Respondent is due to pay rent of £650 per month.
- 9 On 20<sup>th</sup> September 2019 the Applicant sent a Form AT6 Notice of Intention to Raise Proceedings for Possession by tracked delivery to the Respondent. The

Form AT6 cited grounds 8, 11 and 12 of Schedule 5 of the 1988 Act and stated that proceeding would not be raised any earlier than 8<sup>th</sup> October 2019.

- 10 As at the date of service of the Form AT6, arrears in the sum of £3247.01 were outstanding.
- 11 As at the date of the Case Management Discussion, arrears in the sum of £4221.05 are outstanding.
- 12 The arrears are not the result of any failure of payment of housing benefit or its equivalent.

### **Reasons for Decision**


- 13 The Tribunal was satisfied that it was able to continue with the Case Management Discussion in the absence of the Respondent. She had been served with a copy of the application paperwork as well as notification of the date, time and location of the Case Management Discussion. The Tribunal was therefore satisfied that it was able to make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties.
- 14 In this case the Applicant primarily sought repossession on ground 8 of the Housing (Scotland) Act 1988 ("the 1988 Act"). The Respondent had been properly served with a Form AT6 giving notice of the Applicant's intention to raise proceedings on that ground. The Tribunal was satisfied that the Tenancy Agreement made provision for the tenancy to be terminated on this ground, therefore the Applicant did not require to terminate the contractual tenancy between the parties prior to seeking repossession. The Tribunal therefore considered whether ground 8 had been met.
- 15 Ground 8 is a mandatory ground. It states that the Tribunal must make an order for repossession where there is at least three months rent outstanding both at the date of service of the AT6 and at the date of determination of the application, unless there is evidence to show that the arrears are due to a failure to pay housing benefit or its equivalent.
- 16 The Tribunal was satisfied having regard to the written and verbal submissions from the Applicant that arrears of rent in the sum of £3247.01 had been outstanding when the AT6 was served and arrears as at the date of the Case Management Discussion were £4221.05. The Tribunal further noted that there was no evidence before it to suggest that the arrears were a result of any failure or delay in the payment of housing benefit or its equivalent. On that basis the Tribunal considered that the provisions of ground 8 had been met.

- 17 For the avoidance of doubt, the Tribunal was also satisfied that both grounds 11 and 12 were established on the basis that the Respondent had persistently failed to make payment of rent and at least one months rent was in arrears.
- 18 The Tribunal therefore made an order for repossession against the Respondent.

### 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.

Ruth O'Hare

 \_\_\_\_\_ 23/12/19  
Legal Member/Chair Date