



**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/19/3510

Re: Property at 6 Bryans Avenue, Newtongrange, EH22 4RU (“the Property”)

Parties:

**My Ziggy Limited, 2A West Coates, Edinburgh, United Kingdom, EH12 5JQ
 (“the Applicant”)**

**Ms Samantha Needle, 6 Bryans Avenue, Newtongrange, EH22 4RU (“the
 Respondent”)**

Tribunal Members:

Anne Mathie (Legal Member)

Decision (in absence of Respondent)

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

- **Background**

This is an application in terms of Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 for an order for possession in relation to an assured tenancy. The application was received by the Tribunal on 31 October 2019. Along with the application form, the Applicant’s solicitors lodged a copy of the lease agreement, a schedule of arrears, a Notice to Quit and corresponding Sheriff Officer’s certificate, an AT6 along with corresponding Sheriff Officer’s certificate, a Section 11 Notice and a paper apart outlining the Applicant’s position. The case was accepted and scheduled for a Case Management Discussion today. The Respondent was served with notice of the application and today’s Case Management Discussion by Sheriff Officers on 9 December 2019. The Respondent was advised that she was required to attend today’s Case Management Discussion. She was asked to lodge any written

representations by 26 December 2019. She was also advised that the Tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order or payment order. She was also advised that if she did not attend the Case Management Discussion this would not stop a decision or order being made by the Tribunal if the Tribunal considers that it has sufficient information before it to do so and that the procedure has been fair. No written representations were received from the Respondent.

- **The Case Management Discussion**

The Case Management Discussion took place today at Riverside House, Gorgie Road, Edinburgh. Mr Duncan Hamilton, solicitor of ELP Arbuthnott Maclanachan appeared on behalf of the Applicant. 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.

Mr Hamilton confirmed that the rent arrears at today's date amounted to £8425. On that basis the Applicant was seeking eviction, primarily under Ground 8 of Schedule 5 to the Housing (Scotland) Act 1988 ("the 1988 Act"). Mr Hamilton confirmed that the Applicants had made enquiries as to the Respondent's personal circumstances without much success. They did not know whether she was in receipt of Housing Benefit or Universal Credit. There had been absolutely no payment of rent since October 2018. A neighbour had suggested she was not always resident at the Property.

- **Findings in Fact**

The parties entered into an assured tenancy for 12 months from 31 October 2017. At the end of the initial term the tenancy continued on a month to month basis.

The rent contractually due was £525 per calendar month.

Since January 2018 the rent had been underpaid and was often paid in two instalments. The rent payments stopped completely from October 2018.

On 4 October 2019 an AT6 was served on the Respondent stating repossession was sought under grounds 8, 11 and 12 of Schedule 5 to the 1988 Act and stated that proceedings would not be raised before 23 October 2019.

A Notice to Quit was served on the Respondent by Sheriff Officers on 14 August 2019 requesting the Respondent vacate the premises by 30 September 2019.

At the time of service of the AT6 there were rent arrears of £6325.

At today's date the rent arrears are £8425, despite a payment order being previously granted by the Tribunal in August 2019 for £5275. This remains unpaid.

The arrears are not as a result of any delay or failure in the payment of Housing Benefit or Universal Credit.

- **Reasons for Decision**

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 details 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.

In this case the Applicant primarily sought repossession on Ground 8 of Schedule 5 to the 1988 Act. The Respondent had properly been served with a Form AT6 giving notice of the Applicant's intention to raise proceedings on that ground. A Notice to Quit had also been served on the Respondent.

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 the hearing/Case Management Discussion, unless there is evidence to show that the arrears are due to a failure or delay in paying a relevant benefit.

The Tribunal was satisfied having regard to the written and verbal submissions from the Applicant's solicitor that arrears of rent in the sum of £6325 had been outstanding when the AT6 was served and arrears at today's date were £8425. The Tribunal further noted that there was no evidence before it to suggest that the arrears were as a result of any failure or delay of paying Housing Benefit or Universal Credit. On that basis, the Tribunal considered that the provisions of Ground 8 had been met.

For the avoidance of doubt, the Tribunal was also satisfied that both Grounds 11 and 12 of Schedule 5 to the 1988 Act were established on the basis that the Respondent had persistently failed to make payment of rent and at least one month's rent was in arrears.

- **Decision**

The Tribunal made an order for repossession of the Property 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.

Anne Mathie
Legal Member/Chair

10 January 2020
Date