

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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 and Rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)**

**Chamber Ref: FTS/HPC/EV/23/0579**

**Re: Property at 14 Robertson Crescent, Saltcoats, KA21 5JD (“the Property”)**

**Parties:**

**Miss Carol Gargan 33 Caledonia Road, Saltcoats, KA21 5AJ (“the Applicant”) per Hovepark Lettings Hove Park, 56 Hamilton Street, Saltcoats, KA21 5DS (“the Applicant’s Agents”)**

**Miss Caleigh McLean and Miss Lorna Wyper 14 Robertson Crescent, Saltcoats, KA21 5JD (“the Respondents”)**

**Tribunal Members:**

**Karen Moore (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory process for eviction and recovery of possession having been established, it is reasonable to grant the Order sought.**

1. By application received between 23 February 2023 and 24 February 2023 (“the Application”), the Applicant’s Agents applied to the Tribunal for an Order for possession of the Property based on Grounds 11,12 and 19 of Schedule 5 to the Act. The Application comprised copy Notices in respect of the Grounds with proof of service, copy short assured tenancy agreement with relevant AT5 between the Parties, copy notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to North Ayrshire Council, being the relevant local authority, a statement of rent due and owing amounting to £5,025.00 and copy reminder letters to the Respondents together with responses undertaking to pay the rent due. The Application was accepted by the Tribunal and a Case Management Discussion (the “CMD”) was fixed for 19 May 2023

at 14.00 by telephone conference. The CMD was intimated to the Parties and to the Respondents, in particular, by Sheriff Officer on 3 April 2023.

2. Prior to the CMD, the Applicant's Agents provided an updated rent statement showing £5,300.00 to be due and owing.

## **CMD**

3. The CMD took place on 19 May 2023 at 14.00 by telephone. The Applicant did not take part and was represented by Miss Hughes of the Applicant's Agents took part on her behalf. Both Respondents took part and were not represented.
4. The Tribunal explained that the purpose of the CMD was to identify the facts of the matter, to establish if the ground for the Application is satisfied and to determine if it is reasonable for the Tribunal to grant the Order
5. The Tribunal heard from the Parties. Miss Hughes advised that the rent arrears had increased and that the Applicant sought the eviction order.
6. Miss Wyper of the Respondents advised that she had recently stopped working and has been unable to make payments. She explained that she is awaiting benefits payment has had no income since March. Miss McLean advised that she has left the Property and also is not in employment. Miss Wyper advised that she has no family to call on for support and that both she and Miss McLean have had debt problems and cannot get credit to assist in clearing their debts.
7. In answer to questions from the Tribunal, Miss Wyper accepted that few payments had been made since 2021 and explained that as both she and Miss McLean had had Covid and had been unable to work, the debts had increased, all of which was made more difficult because of direct deductions from their respective wages. She advised that although Miss McLean left the Property in mid-March, the Applicant had not been given formal notification.
8. On behalf of the Applicant, Miss Hughes advised that the Applicant has a mortgage on the Property which is her only rental property. The Applicant works full time and has a mortgage on her own home. Miss Hughes pointed out that the Respondents made no payments between December 2021 and July 2022, and, although a payment plan was set up on 2 August 2022, no payments were made until the end of January 2023. Miss Hughes estimated that if Miss Wyper receives Universal Credit, the level of payment for housing will be £350.00 which is £75.00 short of the monthly rent of £425.00. Miss Hughes stated that, although Miss Wyper had stated that she was eligible for a discretionary fund top up payment, this payment is discretionary and not guaranteed.
9. In answer to questions from the Tribunal, Miss Wyper advised that she was confident she would receive the discretionary payment but stated that she did not know what her benefit payment would be and how much she could pay towards the rent arrears. Miss Wyper stated that the previous payment plans had fallen through as there had

been repair and dampness issues with the Property but accepted that she was not withholding rent in a separate account.

### **Issue for the Tribunal**

10. The issue for the Tribunal is to determine if the statutory ground is established and if it is reasonable to grant the Order. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal “*may do anything at a case management discussion .....including making a decision*”. The Tribunal adjourned to consider if it had sufficient information to make a decision and took the view that it had. Therefore, the Tribunal proceeded to determine the Application.

### **Findings in Fact**

11. From the Application and the CMD, the Tribunal made the following findings in fact: -

- i) There is a short assured tenancy of the Property between the Parties with a monthly rent of £425.00;
- ii) A valid AT6 Notice to Quit was served;
- iii) The Respondents have not vacated the Property;
- iv) The Respondents have accrued rent arrears of £5,300.00 which sum is due and owing by the Respondents to the Applicant;
- v) The Respondents have no income or savings, have personal debts and so are not able to make realistic payments towards the rent arrears;
- vi) The Respondents are not likely to receive sufficient benefits to meet the cost of the rent and make payment towards the rent arrears;
- vii) The Respondents have no dependents and the second -named Respondent resides alone in the Property.

### **Decision and Reasons for Decision**

12. The Tribunal had regard to all the information before it and to its Findings in Fact.

13. The Tribunal took the view that the Grounds for eviction had been satisfied.

14. The Tribunal then considered if it could be satisfied that it is reasonable to issue an eviction order. The Tribunal had regard to the fact that the Respondents have not paid rent regularly for a considerable time, have not adhered to payment plans and are not likely to have sufficient income or state benefits to make payment of the rent arrears and the current rent. The Tribunal had regard to the financial position of the Applicant and took the view that the non-payment of rent by the Respondents had an adverse impact on her. The Tribunal took the view that continuing the tenancy places an additional and continuing financial burden on both the Applicant and the Respondents. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order.

### **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.**

K. Moore

\_\_\_\_\_ **19 May 2023**  
**Legal Member/Chair** **Date**