

**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 of the Housing (Scotland) Act 1988**

**Chamber Ref: FTS/HPC/EV/19/2372**

**Re: Property at 108F Fenwick Drive, Barrhead, Glasgow, G78 2LA (“the Property”)**

**Parties:**

**Miss Louise Kernohan, Flat 2/2, 524 London Road, Glasgow, G40 1DU (“the Applicant”)**

**Mr Matthew Whiteman, 108F Fenwick Drive, Barrhead, Glasgow, G78 2LA (“the Respondent”)**

**Tribunal Members:**

**Morag Leck (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession should be granted in favour of the applicant.**

**Background**

1. An application was received on 29 July 2019 under Rule 65 of Schedule 1 to the First Tier Tribunal for Scotland( Housing and Property Chamber) ( Procedure) Regulations 2017 (“ the 2017 rules”) seeking recovery of possession of the property under Grounds 8.11 and 12 as set out in schedule 5 of the Housing(Scotland) Act 1988 (“ the 1988 Act “).
2. The application included copies of the following documents :-
  - i) Tenancy agreement between the parties dated 12<sup>th</sup> September 2017 ;

- ii) Form AT6 Notice given under section 19 of the Act and Notice to Quit (NTQ) both dated 28<sup>th</sup> June 2019 together with Sheriff Officer's execution of service dated 1<sup>st</sup> July 2019
- iii) Notice under section 11 of the Homelessness etc.(Scotland) Act 2003 sent to East Renfrewshire Council
- iv) Rent Statement setting out rent arrears as at the date of application of £4675.00

The Applicant made reference in her letter accompanying the application to a previous application for recovery of possession which had been refused by the Tribunal and provided ancillary documentation relating to that application and reasons for refusal.

- 3. Notice of a Case Management Discussion (CMD) together with the application papers and guidance notes had been served on the Respondent by Sheriff Officers on behalf of the Tribunal on 23<sup>rd</sup> August 2019. No written representations had been received from the Respondent.

#### **Case Management Discussion**

- 4. A CMD was held on 2<sup>nd</sup> October 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow G" 8GT. The Applicant was in attendance. The Respondent was not present or represented. The Tribunal was satisfied that the requirements of rule 17(2) of the 2017 Rules had been complied with and proceeded with the CMD in absence of the Respondent in terms of rule 29 of the 2017 Rules.
- 5. The Applicant confirmed to the Tribunal that the Respondent had entered into a lease of the property as from 12<sup>th</sup> September 2017. The property was managed on her behalf by Letting Agents, Infiniti Properties Management Ltd. The Respondent had paid rent until September 2018. She was aware that he had become unemployed around June 2018 and accrued some rent arrears. These had been addressed by September 2018 when rent payments had then ceased altogether. At the time of the application rent arrears outstanding were £4675 and no further payments had been made by the Respondent as at the date of the CMD. There had been some communication with the Respondent up until November 2018 but since then he had failed to communicate either with Infiniti Properties or directly with her. The letting agents carried out weekly "door chaps" and had confirmed that the Respondent was still resident in the property.
- 6. The Applicant also confirmed that she had no information in relation to the Respondent's present circumstances and whether he was in receipt of benefits or universal credit. There had been some communication with him around September to November 2018 when she understood that he may have been unemployed or intending to claim benefits but all communication had ceased in November 2018.

## Findings in Fact

7. The Tribunal made the following findings in fact:-
  - i) The Applicant is the owner of the property
  - ii) The parties entered into a Short Assured Tenancy on 12<sup>th</sup> September 2017
  - iii) The monthly rent payable in terms of the tenancy agreement was £425
  - iv) The AT6 and NTQ contained the prescribed information and were both dated 28<sup>th</sup> June 2019. There was evidence that both had been served on the Respondent by Sheriff Officers on 1<sup>st</sup> July 2019.
  - v) As at both the date of service of the AT6 and the date of the CMD , the respondent was in rent arrears of at least three months

## Reasons for Decision

8. Rule 17 of the 2017 Rules states that a Tribunal may do anything at a CMD which it may do at a hearing including making a decision. The Tribunal was satisfied that it had before it all the information and documentation it required and that it would determine the application without a hearing.
9. Ground 8 as set out in Schedule 5 of the 1988 Act states :-

“Both at the date of service of the notice under section 19 of this Act relating to the proceedings for possession and at the date of a hearing, at least three months’ rent lawfully due from the tenant is in arrears”.
10. In terms of section 18 and Schedule 5 of the 1988 Act if the Tribunal is satisfied that ground 8 is established , then (subject to subsection 3A), the Tribunal is required to make an order for possession.
11. Section 18 (3A) provides that where ground 8 is established , and the rent is in arrears as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit , the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.
12. The Tribunal was satisfied. that the arrears of rent lawfully due from the Respondent as at the date of service of the Form AT6 Notice and at the date of the CMD exceeded three months.
13. The Tribunal then considered whether section 18 (3A) was applicable in this case. There was no evidence before the Tribunal that the rent was in arrears as a consequence of a delay or failure in the payment of any relevant benefits.
14. The Tribunal is therefore required to grant an order for possession under section 18 and ground 8 in schedule 5 of the 1988 Act. Given that the Tribunal found ground 8 established, it did not consider further whether grounds 11 and 12 were also established.

## Decision

The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of 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.

M Leck

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Legal Member

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Date

2/10/19