



**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/19/3085**

**Re: Property at 1 Woodstock Drive, Wishaw, ML2 7DP (“the Property”)**

**Parties:**

**Miss Jill Dougan, C/O 139 Main Street, Wishaw, ML2 7AU (“the Applicant”)**

**Mr Ben Carson, 1 Woodstock Drive, Wishaw, ML2 7DP (“the Respondent”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member)**

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

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

**Background**

This is an application dated 1<sup>st</sup> October 2019 brought in terms of Rule 65 (Application for order for possession in relation to assured tenancies) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicants provided with her application copies of the short assured tenancy agreement, form AT5, notice to quit, section 19 notice (form AT6), Section 11 notice, rent arrears statement, and relevant executions of service.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The form AT6 intimated to the tenant that the landlord intended to raise proceedings for possession of the house on grounds 8, 10 and 11 of Schedule 5 to the *Housing (Scotland) Act 1988*.

The Respondent has been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 12<sup>th</sup> November 2019, and the Tribunal was provided with the execution of service.

A Case Management Discussion was set for 12<sup>th</sup> December 2019, but was postponed by the Tribunal on the unopposed request of the Respondent. The Tribunal then intimated the re-scheduled Case Management Discussion by post.

The Respondent sought a further postponement on the basis that he was working and unable to attend, which was opposed by the Applicant and refused by the Tribunal, who advised him that he was entitled to make written representations and/or to appoint a representative to appear on his behalf.

On the morning of the date set for the Case Management Discussion, the Respondent again e-mailed the Tribunal requesting that any eviction order that it granted should not be enforceable until at least 13<sup>th</sup> February, to allow him time to remove his personal possessions from the Property.

### **Case Management Discussion**

A Case Management Discussion was held on 16<sup>th</sup> January 2020 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant did not appear, but was represented by Mr Kane, solicitor. The Respondent did not appear, nor was he represented.

Mr Kane invited the Tribunal with reference to the application and papers to grant the order sought on ground 8 of Schedule 5 to the *Housing (Scotland) Act 1988*.

Mr Kane drew the Tribunal's attention to its previous decision in application FTS/HPC/CV/19/1734 granting an order for payment against the Respondent and in favour of the Applicant for rent arrears previous to those which form the subject matter of this application.

The Respondent has now accrued rent arrears of £7,269.15 including the unpaid arrears which were the subject matter of the Tribunal's last order. The monthly rental in terms of the tenancy agreement is £425.00.

### **Statement of Reasons**

In terms of Section 18(3) of the *Housing (Scotland) Act 1988* ("the Act"), if the Tribunal is satisfied that any of the grounds in Part I of Schedule 5 to the Act is established then, subject to subsections (3A) and (6), the Tribunal shall make an order for possession.

Section 18(3A) of the Act provides that if the First-tier Tribunal is satisfied (a) that Ground 8 in Part I of Schedule 5 to this Act is established; and (b) that rent is in arrears as mentioned in that Ground 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.

Section 18(6) of the Act provides that the First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless (a) the ground for possession is Ground 2 or Ground 8 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9, Ground 10, Ground 15 or Ground 17; and (b) the terms of the tenancy make provision for it to be brought to an end on the ground in question.

The Tribunal is satisfied that ground 8 contained in Part 1 of Schedule 5 to the Act has been established. The Tribunal has not been satisfied that rent is in arrears as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit. There has been no evidence to establish any such reason for rent arrears. The terms of the short assured tenancy agreement make provision for it to be brought to an end on the ground in question.

For the above reasons, the Tribunal shall make an order for possession.

### **Decision**

In these circumstances, the Tribunal will make an order for possession of the house let on the tenancy as sought in this application.

### **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.

Neil Kinnear

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**Legal Member/Chair**

16/01/20

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**Date**