



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 19 of the Housing (Scotland) Act 1988**

**Chamber Ref: FTS/HPC/EV/20/1350**

**Re: Property at 8 Sempie Street, Hamilton, Lanarkshire, ML3 9JL (“the Property”)**

**Parties:**

**Mrs Carolyn Grady, c/o 31A North Bridge Street, Bathgate, West Lothian, EH48 4PJ (“the Applicant”)**

**Miss Pamela Larkin, 8 Sempie Street, Hamilton, Lanarkshire, ML3 9JL (“the Respondent”)**

**Tribunal Members:**

**Anne Mathie (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that that an Order for Possession be made under section 18(3) of the Housing (Scotland) Act 1988**

- **Background**

This is an application in terms of Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Tribunal Rules”). An application was received from the Applicant’s representative dated 19 March 2020 seeking possession of the Property in terms of Rule 65 of the Tribunal Rules. Along with the application form, the Applicant’s representative lodged:

1. A copy of the tenancy agreement dated 31 March 2017
2. A rent statement as at 19 March 2020
3. Copy Form AT6 together with Sheriff Officer’s certificate of execution of service

4. Copy section 11 notice to local authority together with confirmation of email service
5. A paper apart confirming possession was sought in terms of Grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988

The application was accepted and assigned to a Case Management Discussion on 21 August 2020. Details of the application and copies of the supporting documents were served on the Respondent by Sheriff Officers on 3 August 2020 requesting that written representations be lodged by 14 August 2020. The Respondent was also advised in writing 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 a payment order. The Respondent was advised that if she did not take part in 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 the procedure has been fair. No written representations have been received from the Respondent.

- **The Case Management Discussion**  
The Case Management Discussion took place by teleconference today due to the Covid-19 outbreak. The Applicant was represented by Kirsty Donnelly, solicitor, of Bannatyne Kirkwood France & Co. The Respondent did not attend. The Case Management Discussion took place along with the Case Management Discussion in the related rent arrears application (FTS/HPC/CV/20/1352). The Applicant's representative confirmed that rent arrears were now in the sum of £4617 as per the updated rent arrears statement that had been lodged in the related Rule 70 application. The Applicant's representative was unable to confirm the Respondent's position but her understanding was that rent had always been paid directly by the Respondent and there was nothing to suggest that any of the arrears were caused by a delay or failure in payment of a relevant benefit.
- **Findings in Fact**  
The Applicant and Respondent had entered into a tenancy agreement on 31 March 2017 in respect of the Property. The initial term of the tenancy agreement was from 31 March 2017 to 29 September 2017 and, unless terminated by either party, would continue on a monthly basis thereafter.

Rent was payable at the rate of £450 per calendar month in terms of clause 1.9 of the tenancy agreement.

Rent arrears had accrued and at the date of service of the AT6 rent arrears were in the sum of £1971.

At today's Case Management Discussion rent arrears had increased to the sum of £4617.

No payments of rent had been made since October 2019.

- Reasons for Decision

The Tribunal was satisfied that the respondent had received proper notification of the application and the Case Management Discussion. The Tribunal therefore considered it was able to continue with the Case Management Discussion in the absence of the Respondent. The Tribunal was further 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.

Rent arrears at the date of service of the AT6 and at today's date were in excess of three month's rent. There was nothing to suggest that the arrears were caused by a failure or delay in payment of a relevant benefit.

In terms of Section 18(3) of the Housing (Scotland) Act 1988 ("the 1988 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 1988 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 1988 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 1988 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.

In terms of Section 18(4) of the 1988 Act, if the Tribunal is satisfied that any of the grounds in Part II of Schedule 5 to this Act is established, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

Section 18(4A) of the 1988 Act provides that in considering for the purposes of subsection (4) above whether it is reasonable to make an order for possession on Ground 11 or 12 in Part II of Schedule 5 to this Act, the First-

tier Tribunal shall have regard, in particular, to the extent to which any delay or failure to pay rent taken into account by the Tribunal in determining that the Ground is established is or was a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit.

The Tribunal is satisfied that grounds 11 and 12 contained in Part 2 of Schedule 5 to the 1988 Act have been established, and considers that it is reasonable to make an order for possession. 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.

There was nothing before the Tribunal disputing the evidence before it.

- **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.**

Anne Mathie

**21 August 2020**

---

**Legal Member/Chair**

---

**Date**

Anne Mathie