

**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 of the Housing (Scotland) Act 1988 (“the Act”).**

**Chamber Ref: FTS/HPC/EV/21/2257**

**Re: Property at 63 Slains Court, Peterhead, AB42 2YF (“the Property”)**

**Parties:**

**Mr Steven Clarkson, 58 Druids Park, Perth PH1 4EJ per Penny Lane Homes, 10-12 High Street, Renfrew PA4 8QR (“the applicant”)**

**Mrs Joanne Burnett, 63 Slains Court, Peterhead, AB42 2YF (“the respondent”)**

**Tribunal Members:**

**David Preston (Legal Member) and Elizabeth Currie (Ordinary Member)**

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

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

1. By application dated 17 September 2021 the applicant applied to the First-tier Tribunal under Rule 65 of the First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) for an order for possession under grounds 11 and 12 of Schedule 5 to the Act. The application was accompanied by:

Short Assurance Tenancy Agreement dated 13 April 2012;  
Form AT6 dated 9 March 2021;  
Notice to Quit dated 9 March 2021;  
Rent Statement covering the period 23 February 2017 13 October 2021 showing arrears of rent amounting to £5740; and  
Letter to Aberdeenshire Council regarding Notice under section 11 of the Homelessness etc (Scotland) Act 2004.

In subsequent correspondence with the tribunal the applicant’s representative submitted: Notice under section 11 of the Homelessness etc (Scotland) Act 2003; Sheriff Officers’ Invoice for Service of Notice to Quit and form AT6 on the respondent dated 13 March 2021; further copy Rent Statement; email from respondent dated 25 November 2021.

2. By Decision dated 14 December 2021, a Convener of HPC having delegated power for the purpose, referred the application under rule 9 of the Rules to the tribunal. A letter of Intimation dated 13 January 2022, with Notice of the Case Management Discussion to be held by telephone on 22 February 2022 together with the case papers was served on the tenant by Sheriff Officers on 17 January 2022. The tribunal was provided with a copy of the Sheriff Officer's Certificate of Citation of that date.
3. The tribunal was satisfied that all relevant documents and intimation of today's hearing had been duly served on the respondent and that the requirements of Rule 24 had been complied with.

### **The Case Management Discussion (CMD)**

4. Mr Ian Troy appeared on behalf of the applicant. There was no appearance by or on behalf of the respondent. The tribunal determined that the respondent had voluntarily waived her right to be present at the hearing or be represented and was accordingly content to proceed in her absence.
5. Mr Troy advised that there had been no communication from the respondent since her email of 26 November 2021 and no further rent had been paid either by the respondent or from Universal Credit.
6. With regard to the errors in the statutory form AT6, Mr Troy submitted that although in the wrong part of the form, all necessary information as required by the Act and been communicated to the respondent. In addition, he pointed to the email of 26 November from which it was apparent that the respondent was fully aware of the situation which was the purpose of the form AT6. He explained that the respondent had been the tenant for many years. She and her former husband had previously owned the property and had sold it to the applicant with whom they entered into the Tenancy Agreement.
7. Mr Troy advised that letters had been sent to the respondent regularly since she had fallen into arrears in October 2020. He understood that she had found difficulty in maintaining the tenancy following the breakup of her marriage and he understood that she had experienced difficulties with her employment and was in receipt of benefit payments. She had advised in her email of 26 November 2021 that she had asked that payments of Universal Credit be paid direct to the applicant, but no such payments had been received. Mr Troy advised that he had attempted to apply on behalf of the applicant to have payments made direct but without success. Mr Troy advised that the current balance on the rent account amounts to £7660 in arrears.
8. Mr Troy confirmed to the tribunal that there had been regular correspondence with the respondent with regard to the arrears and that the required pre-action protocol letters had been sent to the respondent but there had been no response from her which had made the application necessary.
9. The tribunal noted that the C Section of the Land Certificate disclosed an outstanding security over the property.

### **Reasons for Decision**

10. Rule 17 of the Regulations states that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision. The tribunal decided

that, on the basis of the information presented to it, it was able to determine the application at the CMD.

11. The tribunal noted that the tenant had been advised that she had to be evicted before she could be re-housed and that she had been given due notice of the present application in which she was free to participate if she so wished but that she had failed to respond in any way to the application or to provide any further details of her circumstances.
12. The tribunal requires to be satisfied that the granting of an eviction order is reasonable in all the circumstances and considers, in this case that on balance it is prepared to agree that the granting of an order meets that test. The property is subject to a secured loan which requires to be repaid; the respondent is in arrears of rent to a significant degree, currently standing at £7660. The tribunal is prepared to accept the submissions of the applicant's agent that efforts have been made to accommodate the difficulties in which the respondent has found herself but that she has not responded to such efforts and accordingly, on balance, it is reasonable to grant the order as requested.
13. The tribunal noted that the applicant's agent had not submitted all necessary documentation along with the application and this was only received after a number of requests had been made to which the agents responded. It is desirable that all necessary procedures are followed, and information is provided along with the application to ensure a speedy determination.

## **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.**

**D. P**

22 February 2022