



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 18 of the Housing (Scotland)  
Act 2006**

**Chamber Ref: FTS/HPC/EV/22/0052**

**Re: Property at 5 Whinny Burn Court, Motherwell, Lanarkshire, ML1 2LW (“the  
Property”)**

**Parties:**

**Mr Scott Mather, 20 Stein Terrace, Ferniegair, Hamilton, Lanarkshire, ML3 7FR  
 (“the Applicant”)**

**Mr Lee Barclay, 5 Whinny Burn Court, Motherwell, Lanarkshire, ML1 2LW (“the  
Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member) and Mike Scott (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the application should be decided without a Hearing  
and granted an Order for Possession of the Property.**

**Background**

By application, dated 7 January 2022, the Applicant sought an Order for Possession of the Property under Section 18 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Ground relied on was Ground 8 of Schedule 5 to the 1988 Act, namely that both at the date of service of Notice under Section 19 of the 1988 Act relating to the proceedings and at the date of the Hearing, at least three months’ rent lawfully due from the Tenant is in arrears.

The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Parties commencing on 22 July 2017 and, if not terminated on 21 January 2018, continuing until terminated by either Party giving no less than two months’ notice to the other Party. The rent payable was £450 per month. The Applicant also provided copies of a Rent Statement showing arrears as at 21 December 2021 of £9,200, no rent having been paid since October 2020, a Form AT6 Notice dated 2 July 2021, advising the Respondent that the Applicant intended to raise proceedings for

possession under Grounds 8, 11 and 12 of Schedule 5 to the 1988 Act and that proceedings would not be raised before 5 January 2022, and a Notice to Quit, also dated 2 July 2021, requiring the Respondent to vacate the Property by 21 August 2021, with evidence of service on the Respondent of both Notices. The Applicant also provided the Tribunal with a copy of a letter of 8 February 2021 to the Respondent with which was enclosed a copy of the Scottish Government leaflet "Private Rented Sector Tenant Support", published in September 2020.

On 21 February 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 14 March 2022. The Respondent did not make any written representations to the Tribunal.

### **Case Management Discussion**

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 6 April 2022. The Applicant was present and was represented by Mr Alistair Buttery of Freelands, solicitors, Motherwell. The Respondent was not present or represented. The Applicant's representative advised the Tribunal that no rent had been received since the date of the application and asked the Tribunal to grant an Order for Possession without a Hearing.

### **Reasons for Decision**

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion 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 to enable it to decide the application without a Hearing.

Ground 8 of Schedule 5 to the 1988 Act, as amended by the Coronavirus (Scotland) Act 2020 provides that the Tribunal may grant an Order for Possession if, both at the date of the service of the Notice required under Section 19 of the 1988 Act (the Form AT6 Notice) and at the date of the Hearing at least three months' rent lawfully due from the tenant is in arrears and the Tribunal is satisfied that it is reasonable to grant the Order.

The Tribunal was satisfied from the enclosure that had been sent to the Respondent on 8 February 2021, that the requirements of The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 had been met by the Applicant.

The Tribunal was also satisfied that, both at the date of service of the Form AT6 Notice and at the date of the Case Management Discussion the arrears of rent lawfully due by the Respondent to the Applicant exceeded three months.

The Tribunal noted that the Respondent had not paid any rent since October 2020 and that, even at that date, the rent arrears had been £3,350. The Respondent had not made any written representations and had not been present or represented at the Case Management Discussion. Having considered all the evidence before it, the Tribunal decided that it would be reasonable to grant an Order for Possession of the Property.

The application had also been made under Grounds 11 and 12 of Schedule 5 to the 1988 Act but, as the Tribunal had decided that the requirements of Ground 8 had been met, it was not necessary to consider further the application under Grounds 11 and 12.

The Decision of the Tribunal was unanimous.

## **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.**

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**Legal Member: George Clark**

**Date: 6 April 2022**