



**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/22/2529

Re: Property at 8 Hatchbank Cottages, Kinross, KY13 9JY (“the Property”)

Parties:

Mr Michael Rutkowski, , 7 Hatchbank Cottages, Kinross, KY13 9JY; (“the Applicant”)

Ms Debra Marks 7 Hatchbank Cottages, Kinross, KY13 9JY (Applicant’s representative)

Mr Garry Pollock, Mrs Stephanie Pollock, 8 Hatchbank Cottages, Kinross, KY13 9JY (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

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

- **Background**

1. This was a Case Management Discussion to consider an application made by the Applicant on 23rd July 2022 for an order of possession raised under rule 65 of the Tribunals rules and based on grounds 8, 11 and 12 of Schedule 5 of the Housing Scotland Act 1988 and the Respondent being in arrears of rent of £4990.75 at the date of the application.
2. The following was submitted with the application:-
 - a. Copy tenancy agreement between the Applicant and the Respondents dated 12th January 2017
 - b. Copy Notice to Quit dated 1st May 2022
 - c. S33 notice dated 1st May 2022

- d. Copy Notice to leave dated 1st May 2022
 - e. S11 notice to Perth and Kinross Council
 - f. Various copy e-mails from the Applicant to the Respondents complying with pre action requirements
 - g. Copy summary of rent to May 2022 showing sum due of £4990.75.
3. The section 11 notice lodged referred to the wrong piece of legislation and the Applicant was invited to resubmit a fresh s11 notice to the local authority specifying the correct legislation namely the Housing Scotland Act 1988 which his representative then lodged on 6th September 2022 along with AT6 form dated 4th July 2022 and evidence of posting on 4th July 2022 and delivery to the Respondents. He also lodged an updated rent statement showing a sum due as of September 2022 of £6241.
 4. The Tribunal also had notification that Sheriff Officers had successfully served the application and the papers on both respondents at the Property on 28th November 2022 personally.
 5. On 11th January 2023 the Tribunal received an e-mail from Ms Marks asking if the Tribunal had received her revised rent statement sent by e-mail to the Tribunal on 27th December requesting an increase to the sum sought to £8741. She also indicated this request had been sent to the Respondents at the Property address and at their new address of 43 Bowton Road Kinross. Within the submissions was a letter to the Respondents confirming the new amount of rent being sought and confirming that the tenants had reported a burst pipe at the Property on 15th December 2022, that the Applicant had attended the Property to carry out an inspection along with the Respondents and found a lot of water damage, recording what had been done to rectify the damage and heat the Property but also noting that when asked if they required alternative accommodation the tenants had indicated they “ had another private rental. “ the letter also notes that the Respondents were still however using the bathroom facilities at the Property and had not vacated the Property with possessions still there.

The CMD

The CMD today proceeded by way of teleconference. The Convener made introductions, and explained how the CMD would be conducted.

1. The Applicant was in attendance and confirmed that Ms Marks was his partner and had helped him with administration with this application but as she was neither an owner nor landlord it was confirmed she was his representative. Ms Marks was also on the call but neither of the Respondents attended nor were they represented although the Tribunal allowed further time after 10 o'clock for them to dial in.
2. As the Tribunal was satisfied that service by Sheriff Officer had been properly made on both Respondents the Tribunal members indicated it would be fair to continue and noted that there had been no response from either Respondent in writing.
3. The Applicant advised that he was seeking an order for eviction and an order for payment of rent arrears. He advised that he believed the tenants had done a midnight flit in December but had not removed all their belongings and were still visiting the house to use the bathroom facilities. He referred to a letter Ms

Marks had lodged sent to the tenants on 27th December recording the damage to the Property from the burst pipe and other damage to it during their tenancy. He also confirmed that the Respondents appear to have another rental property they are occupying but had indicated to him that they were still using this Property and the Applicant himself confirmed they still had a lot of possessions in the property so he was seeking an order of eviction today.

4. With regard to the rent he advised that the first named Respondent is self-employed but he believes has a lot of work, and his wife the second named respondent has a full time job. He advised there has been no further communication with the Respondents nor any payment since May 2022. He advised that they were continually late with payments but have made no attempt to pay anything since then and have not handed back the keys and appear to be using the house.
5. The Applicant confirmed the amount of rent currently outstanding is £8471 and this is likely to increase. He also indicated there are likely to be other costs after he recovers the Property.

Findings in Fact

6. The Applicant and Respondents have entered into an assured tenancy of the Property from 12th January 2017 for 6 months which has continued under tacit relocation thereafter.
7. The Applicant is the Landlord and owner of the Property.
8. The Respondents are the tenants.
9. The Tenancy is an Assured Tenancy in terms of the Housing (Scotland) Act 1988.
10. The Respondents obliged themselves to pay rent at £ 625 per calendar month.
11. The Applicant has served by recorded delivery, an AT6 notice notice dated 4th July 2022 on the Respondents giving notice that he required possession of the Property by 19th July 2022.
12. The AT6 notice specifies that the landlord is relying on Ground 8, 11 and Ground 12 of Schedule 5 of the 1988 Act.
13. The Grounds of eviction including Ground 8, ground 11 and 12 are fully set out in the tenancy agreement.
14. The arrears of rent due at 1st July 2022 amounted to £4,991.
15. The Arrears of rent at today's date are £8,741.00
16. The Respondents who are the tenants have not vacated the property or responded to the AT6 notice.
17. The Respondents have been served notice of this application and have not attended the CMD nor made any representations regarding this application.

Reasons for Decision

18. The Applicant and the Respondents entered into a tenancy agreement whereby the Respondents let the Property from the Applicant from 12th January 2017 for 6 months which has continued to date under tacit relocation.

19. The Respondents have another rental property but despite this have not returned the keys or ended this tenancy and are still using and storing possessions at the Property.
20. The Rent due is £625 per month payable on the 1st of each month.
21. The Respondents have not paid the full rent due. No payments have been made by the Respondents since May 2022 and the sum due and outstanding today is £8,471. The sum due at the date of service of the AT6 was £4991 which is over 3 months' rent.
22. The Applicants have complied with the pre action notification requirements.
23. The Applicant has served an AT6 notice giving 14 days' notice and is entitled to rely on this in terms of S18 (6) of the 1988 Act. There has been no response from the Respondents so the Tribunal finds that the grounds of eviction have been met and it is reasonable for the eviction to be granted as the Respondents have not paid rent for over 6 months, have substantial arrears and have partially left the property but still retain the keys, are able and are using it some of the time and have other accommodation to stay in. In all these circumstances the granting of an order of eviction is reasonable.

Decision

Order for possession granted.

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.

**Jan Todd
Legal Member/Chair**

**12th January 2023
Date**