



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 18(1) of the Housing  
(Scotland) Act 1988**

**Chamber Ref: FTS/HPC/EV/22/4354**

**Re: Property at 37 Barshaw Road, Penilee, Glasgow, G52 4EE (“the Property”)**

**Parties:**

**Mr Andrew O'Brien, 33 Cardonald Place Road, Glasgow, G52 3JP (“the Applicant”)**

**Ms Victoria McMahon, 37 Barshaw Road, Penilee, Glasgow, G52 4EE (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member) and Angus Lamont (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a possession order be granted in terms of Ground 8A of Schedule 5 of the Housing (Scotland) Act 1988 and suspended execution of the order until 9<sup>th</sup> June 2023 in terms of section 20(2)(a) of the Housing (Scotland) Act 1988. The Tribunal made no order in terms of Grounds 11 and 12 of the 1988 Act.**

The decision of the Tribunal was unanimous.

**Background**

1. This application for a possession order was first lodged with the tribunal on 8th December 2022 along with an application for a related payment order application with reference FTS/ HPC/ CV/22/4355. The application for the payment order was accepted by the tribunal on 20<sup>th</sup> December 2022 and the application for the possession order was accepted on 19th of January 2023.

2. A Case management discussion was initially fixed for both applications for 24th March 2023 at 10:00 am.

### **Case Management Discussion 24th March 2023**

3.The case management discussion was attended by the Applicant who represented himself and the Respondent who represented herself.

4.The Tribunal had sight of both applications, a tenancy agreement, Form AT6,an execution of service by Sheriff Officer of the Form AT6 together with rent arrears statement, a notice in terms of section 11 of the Homelessness etc (Scotland ) Act 2003, a breakdown of rent payments and rent arrears, redacted bank statements and an e-mail intimating the notice in terms of section 11 of the 2003 Act to Glasgow City Council.

5. On 22 February 2023 the Applicant submitted further documentation in the form of a further AT6 Form seeking a possession order under Ground 8A of the Housing (Scotland) Act 1988 in that it was suggested that the Respondent had accrued rent arrears under the tenancy where the cumulative amount of rent arrears equates to, or exceeds, an amount equivalent to 6 months' rent. He also lodged a Notice to Quit, execution of service of these documents on the Respondent by sheriff officer, letters sent by the Applicant to the Respondents outlining the level of rent arrears and signposting her to agencies which offer help and support, and e-mail correspondence between the Applicant, the Respondent and the Respondent's former partner on the issue of rent arrears.

6.The parties had entered into an assured tenancy at the property with effect from 1<sup>st</sup> June 2015 which had been for a period of six months, and this had continued on a monthly basis after the initial term of six months. Monthly rent payable in advance is £650 per month in terms of the agreement.

7.The Applicant set out his position as to why he was seeking a possession order. No rent had been paid in terms of a tenancy agreement between the parties since July 2022 and rent arrears were increasing. This was affecting his own financial situation; he was having to take on extra work and he had contacted the Respondent many times to try to deal with the rent arrears. He said the situation was affecting his mental health.

8.The Respondent was unsure of the position she wished to adopt regarding the issue of a possession order but did not dispute the level of rent arrears suggested to have accrued. She accepted no rent had been paid for some months and explained that she had been off sick from work but was now back working. She wanted time to consider her position and take advice. The Applicant was strongly opposed to such a continuation but after consideration the Tribunal determined that the case management discussion should be continued to allow the Respondent to take advice on her position. The Tribunal noted that she indicated at that time that some rent could be paid, and she agreed to make enquiries as to whether she could source any form of lump sum to pay towards the rent arrears.

### **Case Management Discussion 25<sup>th</sup> April 2023.**

9.The Tribunal had issued a Direction to the Applicant in advance of this case management discussion seeking confirmation of whether he was lodging a fresh

application for a possession order under Ground 8A of Schedule 5 of the Housing (Scotland) Act 1988 or whether he was asking the Tribunal to dispense with the requirement for an AT6 on this Ground or seeking to request that the first AT6 served in terms of Grounds 11 and 12 be amended to insert the additional ground.

10.The Applicant had lodged additional representations on 2<sup>nd</sup> April 2023 and a response to the Direction on 19<sup>th</sup> April. These had been crossed over by the Tribunal to the Respondent.

11.At the case management discussion on 25<sup>th</sup> April 2023 the Applicant and Respondent attended and represented themselves. The Applicant was accompanied on the teleconference by his partner Ms Murchie.

12.The Respondent Ms McMahon indicated that she was not opposing a possession order for the property and had been advised to obtain an eviction date from the Tribunal so that she could move forward to secure another property.

13.The Applicant had requested before the first case management discussion to be permitted to amend his application to include a further eviction ground, Ground 8A.He had lodged this request on 22<sup>nd</sup> February 2023 and submitted a Notice to Quit and further AT6 to support his request to amend. The request had not been considered at the first case management discussion. The Respondent Ms McMahon indicated that she did not oppose the amendment, understood what it meant and accepted that the rent arrears had now reached £7043. The tribunal Legal member highlighted to her that this temporary ground for possession Ground 8A, was not affected by the moratorium on evictions as imposed by the Cost of Living (Tenant Protection) (Scotland) Act 2022 and if a possession order was granted on this ground, it could go ahead to execution of the order in the usual timeframe. The Respondent then indicated that she wished to object to the application being amended for that reason, as she did not want to do anything which would mean that the order would be granted sooner than necessary. The Applicant Mr O'Brien confirmed he wished to include this ground due to the increasing rent arrears and the effect that this was having on his own position.

14.The Tribunal adjourned to consider whether to allow the application to be amended. It considered that whilst this was a request to include a new eviction ground, i.e., a new issue in terms of Rule 14 of the Tribunal rules of procedure, it really was a Ground which could be requested when rent arrears reached a certain level i.e., at least 6 months' rent in arrears and raised no new information other than the increased level of rent arrears. This level of arrears had been reached at the start of December 2022 and was not disputed by the Respondent. In all of the circumstances the Tribunal considered that it was appropriate to allow the amendment in terms of Rule 14 of the Tribunal Rules in order that this could be considered and noted that the Respondent had known about the ground since December 2022 when a Notice to Quit and further AT6 with this ground had been served on her by Sheriff officers.

15. The Respondent did not wish to make any representations on Ground 8A after the Tribunal allowed the application to be amended to accept this as a Ground for possession as she accepted the level of rent arrears due and that the ground was

established in terms of the amount outstanding. Her only concern was the timing of any order being made.

16. The Tribunal legal member explained to the parties that the purpose of an AT 6 was to give notice to the Respondent that an application for a possession order might be made to the Tribunal. The AT6 form lodged in relation to Ground 8A had been served on 12<sup>th</sup> December 2022 after the initial application for a possession order had been made on 8<sup>th</sup> December 2022 and gave notice that proceedings on this ground might be raised after 2<sup>nd</sup> March 2023, when in fact proceedings had already started under different possession grounds. The Tribunal Legal member asked the Applicant if he was seeking that this AT6 be dispensed with by the Tribunal on the grounds that it might be reasonable to do so in terms of Section 19(1)(b) of the Housing (Scotland) Act 1988. The Applicant indicated that he was asking the tribunal to consider all the paperwork lodged by him in relation to Grounds 8A, 11 and 12 of the Act, but if that was not possible he was seeking an order under Ground 8A only and asking that the need for an AT6 on this ground be dispensed with, and failing that being possible he was seeking an order under Grounds 11 and 12 of the Act. The Respondent Ms McMahon was asked if she wished to make representations on the amended eviction grounds, but she indicated that she did not wish to make any representations on the law applying to the matter but was simply concerned as to the timing of any order made.

17. The Applicant Mr O Brien indicated to the Tribunal that rent arrears now stood at £7043 and no rent had been paid for several months. He said that this was having a financial effect on him and his family. His work was not guaranteed, and the rent had helped to pay the bills. His partner was having to take on extra shifts at work and he had been trying to do extra hours and this was affecting his family life as he has two young children aged 9 and 11. He had a mortgage on his property and stayed in a 2-bedroom house with his family. There was currently no overtime at his work and the lack of rent payments was having an effect and he feared about how long he could sustain their financial position without any rent being paid. He had written updating the Respondent on the rent arrears every month and had asked to discuss matters with her in October 2022 at the same time as asking to inspect the house. In an email dated 4th November 2022 the Respondent's ex-partner had offered to take responsibility for all rent payments going forward and pay £250 per month to clear the arrears which stood at that time at £4493. The offer was to pay a total of £900 per month (including the monthly rent) from the start of December 2022 and based on the arrears at the time, the offer suggested the arrears would be cleared by May 2024. The Applicant had not accepted the offer querying why there was no lump sum which could be paid given that no rent had been paid at the time for four months. His position was that he had not refused the offer but had not found it reasonable in the circumstances.

18. Ms McMahon the Respondent advised that she had 4 children, twins aged 7, and two others aged 12 and 17. She has two children who have been diagnosed with autism and another with ADHD. She works in the NHS. She explained that she had made an application for housing to the local authority, but this had been rejected and she had been advised to wait for an eviction date. Her income comprised of her wage of between £1400 - £1500 per month, child benefit of £50 per week, child maintenance

of £300 per month and DLA( disability living allowance) which she received for one of her children in the sum of £300 per month. Her eldest son worked. She did not disclose her outgoings but implied these were significant. She said she understood the situation with non-payment of rent by her was causing issues for the Applicant but said that she too was struggling. When asked why she had not paid any rent between the first case management discussion and the second she said she had been advised to wait for eviction and pointed out that for private lets some were asking for three to four months' rent in advance and some people were she said, " chancing their luck". She said she had received assistance from a social worker and from an adviser at Shelter who had told her that the level of rent arrears she had meant that she would be regarded as intentionally homeless. She was asked if she wished to make any offer to the Applicant in relation to the rent arrears and she did not. She indicated that her ex-partner had tried to come to an agreement with the Applicant regarding the arrears, but the offer had been refused. She said that the parties had been able to communicate with each other earlier in the tenancy, but she felt that relations had now broken down because of the Applicant's behaviour. She did not suggest that the rent arrears were due to any delay or failure in the payment of a benefit.

18.The Tribunal considered that it had sufficient information upon which to make a decision and considered that the proceedings had been fair.

### **Applicable Law**

*Section 19 Housing ( Scotland ) Act 1988*

*Notice of proceedings for possession.*

(1)The First Tier Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless—

(a)the landlord (or, where there are joint landlords, any of them) has served on the tenant a notice in accordance with this section; or

(b)Where the Tribunal considers it reasonable to dispense with the requirement of such a notice.

(2)The First Tier Tribunal shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground and particulars of it are specified in the notice under this section; but the grounds specified in such a notice may be altered or added to with the leave of the Tribunal.

(3)A notice under this section is one in the prescribed form informing the tenant that—

(a)the landlord intends to raise proceedings for possession of the house on one or more of the grounds specified in the notice; and

(b)those proceedings will not be raised earlier than the expiry of the period of two weeks or two months (whichever is appropriate under subsection (4) below) from the date of service of the notice.

(4)The minimum period to be specified in a notice as mentioned in subsection (3)(b) above is—

(a)two months if the notice specifies any of Grounds 1, 1A, 2, 5, 6, 7, 8A, 9 and 17 in Schedule 5 to this Act (whether with or without other grounds); and

(b)in any other case, two weeks.

(5) .....

(6)Where a notice under this section relating to a contractual tenancy—

(a)is served during the tenancy; or

(b)is served after the tenancy has been terminated but relates (in whole or in part) to events occurring during the tenancy,

the notice shall have effect notwithstanding that the tenant becomes or has become tenant under a statutory assured tenancy arising on the termination of the contractual tenancy.

(7)A notice under this section shall cease to have effect 6 months after the date on or after which the proceedings for possession to which it relates could have been raised.

### **Cost of Living ( Tenant Protection ) ( Scotland ) Act 2022 Schedule 2 paragraph 5**

(b) after Ground 8 of Schedule 5 of the Housing ( Scotland ) Act 1988 there were inserted—

*“Ground 8A*

The tenant has accrued rent arrears under the tenancy in respect of one or more periods, and the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months’ rent under the tenancy when notice is served under section 19 on this ground or, if dispensed with, when proceedings are raised for an order of possession on this ground.

In deciding under subsection (4) whether it is reasonable to make an order for possession on Ground 8A in schedule 5, the First-tier Tribunal is to consider—

(a)whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,

(b)the extent to which the landlord has complied with the pre-action protocol specified by the Scottish Ministers under subsection (4A)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).

19. The Tribunal considered the notices lodged by the Applicant in this application together with a notice to quit lodged and was satisfied that these were valid and gave appropriate notice to the Respondent of the proceedings for possession. The Notice to Quit had brought the contractual tenancy to an end at a proper end date. The Tribunal was satisfied that it was reasonable to dispense with the service of Form AT6 in relation to Ground 8A of Schedule 5 of the 1988 Act.

### **Findings in Fact and Law**

20. The parties entered into an assured tenancy agreement at the property with effect from 1<sup>st</sup> June 2015.

21. The Respondent lives at the property with her 4 children whose ages range from 7- 17, three of whom have medical conditions.

22. The tenancy agreement ran for 6 months and at the end of the initial term continued on a month-to-month basis.

23. The monthly rent payable throughout the tenancy is £650 payable on the 1<sup>st</sup> of each month.

24. No rent has been paid in terms of the tenancy agreement since July of 2022.

25. The Applicant served an AT6 Notice in terms of Section 19 of the Housing (Scotland ) Act on the Respondent on 18<sup>th</sup> November 2022 giving notice of the intention to apply for a possession order no earlier than 3<sup>rd</sup> December 2022 on the basis of Grounds 11 and 12 of Schedule 5 of the Housing (Scotland ) Act 1988.

26. The Applicant intimated a Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 to Glasgow City Council on 4<sup>th</sup> December 2022.

27. Between July and February 2023 the Applicant sent several letters to the Respondent setting out the level of rent arrears accrued and signposting her to sources of assistance.

28. An offer to pay off the rent arrears in November 2022 as they then stood over a period of 18 months was not accepted by the Applicant who was seeking a lump sum payment towards the rent arrears in the first instance, and this was not offered.

29. As of 1<sup>st</sup> December 2022 rent arrears in terms of the tenancy amounted to £4443, in excess of six months' rent due in terms of the tenancy and no rent has been paid by the Respondent since July 2022.

30. On 12<sup>th</sup> December 2022 a further AT6 was served on the Respondent by Sheriff officer giving her notice of the intention to apply for a possession order no earlier than 2<sup>nd</sup> March 2023 on the basis of Ground 8A of Schedule 5 of the Housing (Scotland ) Act 1988.

31. On 12<sup>th</sup> December 2022 Sheriff officers served a notice to Quit on the Respondent giving her notice to quit the property by 1<sup>st</sup> March 2023.

32. The Notice to Quit coincided with an end date of the monthly tenancy and brought the contractual tenancy to an end.

33. From 1<sup>st</sup> March 2023 the tenancy between the parties has been a statutory tenancy in terms of the Housing (Scotland) Act 1988.

34. The rent arrears as of 25<sup>th</sup> April 2023 have reached £ 7043 and this level of rent arrears is causing financial difficulty for the Applicant.

35. Rent arrears which have accrued are not due to any delay or failure in the payment of a relevant benefit.

### **Reasons for Decision**

36. The tribunal considered whether the eviction grounds were made out in this application. There was no dispute as to the level of rent arrears that had accrued in terms of the tenancy agreement. Grounds 11 and 12 of schedule 5 of the 1988 Act were made out and an AT6 had been properly served on the Respondent giving her appropriate notice that an application would be raised on these grounds. No Notice to Quit was served at that time and it was noted that the full terms of Grounds 11 and 12 were narrated within the assured tenancy agreement and the tribunal noted that the Applicant appeared to seek to terminate the tenancy on these grounds on the basis of a termination clause and the fact that the tenancy agreement contained all the possession grounds.

37. The applicant's main request from the tribunal was not for a possession order in terms of Grounds 11 and 12 of schedule 5 given that these grounds are affected by the moratorium on eviction orders as set out in the Cost of Living (Tenant Protection) (Scotland) Act 2022. Instead, the Applicant elected to seek as his main request a possession order in terms of ground 8A of Schedule 5 of the 1988 Act as if the order was granted on this Ground, he could proceed to take possession of the property more quickly.

38. The Tribunal considered Form AT6 served on 12<sup>th</sup> December 2022 after the application to the Tribunal in terms of Grounds 11 and 12 of Schedule 5 had been made. This notice had given notice that proceedings under Ground 8A would not commence until 2<sup>nd</sup> March 2023 but proceedings had already been raised by that date, the original application having been lodged on 8<sup>th</sup> December and accepted on 29<sup>th</sup> January 2023. The Tribunal formed the view that this form AT6 was not valid in giving notice of proceedings as these had already been raised and then considered whether it was reasonable to dispense with the service of an AT6 in terms of section 19(1) (b) of the 1988 Act. The Tribunal determined that it was reasonable to dispense with this notice given that the Respondent knew of the intention to seek an eviction order under different grounds (11 and 12) in respect of rent arrears as far back as 18<sup>th</sup> November 2022 when the first AT6 Form was served on her. She was being advised



each month by the Applicant when the rent arrears increased so was aware of the position and would have known when they reached a sum in excess of 6 months' rent at the start of December 2022. In all of these circumstances the tribunal considered that it was reasonable to dispense with the requirement for an AT6 notice in relation to Ground 8A.

39. The Tribunal then required to consider whether Ground 8A was made out and noted the terms of the ground required the cumulative level of rent arrears to equate to or exceed 6 months' rent at the time when the AT6 notice is served or when proceedings are raised for an order for possession on this ground. The Tribunal noted that it had dispensed with the requirement for an AT6 on this ground, the notice which had been served being served after the original application had been lodged. The Tribunal then required to consider when proceedings had been raised on Ground 8A. The application had been submitted initially seeking an order under Grounds 11 and 12. An amendment had been intimated to include Ground 8A and this was intimated to the Tribunal on 22<sup>nd</sup> February 2023. This has been intimated to the Respondent before 28<sup>th</sup> February and the amendment to the application had been granted on 25<sup>th</sup> April. The Tribunal considered when this ground had first been raised as part of the proceedings and considered that this was the date when the amendment had first been intimated to the Tribunal i.e., 22<sup>nd</sup> February 2023. The Tribunal considered this to be the date when proceedings were first raised on this Ground. This appeared to be a clear and logical way to approach this issue where an application is lodged and then amended as in this case. Even if this is incorrect then it should be noted that that an amount equivalent to 6 months' rent due in terms of the tenancy was outstanding before the date of the original application being 8<sup>th</sup> December 2022, before the application was accepted on 19<sup>th</sup> January 2023 and before the first case management discussion on 24<sup>th</sup> March 2023.

40. The Tribunal was therefore satisfied that ground 8A was made out and that the Applicant had carried out the required steps before proceedings, subject to the Tribunal dispensing with requirement for an AT6 served on this Ground. The Tribunal then had to consider whether it was reasonable to grant the order under Ground 8A as sought by the Applicant.

41. In considering reasonableness the Tribunal noted that its task was to consider whether, in all the circumstances, granting an order for possession is reasonable, not whether it is the most reasonable course of action in a range of equally reasonable but conflicting courses of action; if it so decides, it must grant the order (***East Lothian Council v Duffy 2012 S.L.T. (Sh. Ct.) 113.***)

42. The Tribunal considered all of the circumstances before it. Rent was no longer being paid at all by the Respondent in terms of the agreement and had not been paid since July of 2022. Rent arrears were increasing and were causing ongoing financial difficulty to the Applicant and family. As against that the Respondent had lived at the property for a lengthy period of time and has four children who live there with her, three of whom have been diagnosed with medical conditions. She is seeking to be rehoused. There is no dispute that as of 25<sup>th</sup> April 2023 the rent arrears have reached £7043, and this is causing ongoing financial difficulty for the Applicant. The Respondent did not wish to make any further offer to pay the arrears during the proceedings although she had indicated between the case management discussions that she could pay some rent but did not do so. Parties had different interpretations of

why there had been no agreement when an offer to pay off the rent arrears in 18<sup>th</sup> months was made by the Respondent's ex-partner in November 2022 and the Respondent considered this had been refused. Although that offer might have paid off the arrears as they then stood within a period of some 18 months the Applicant had not accepted the offer as it did not contain a lump sum as a first payment towards arrears which he found unacceptable. The Tribunal formed the view that there was in fact no divergence on the facts of the offer – it had simply not been accepted. Around that time relations between the parties had deteriorated and there appeared to be no desire by either party to continue the tenancy. Having considered all of the circumstances and in particular that rent arrears reached the equivalent of 6 months' rent at the start of December 2022 and no rent at all has been paid since July 2022, and this is causing ongoing financial difficulty for the Applicant the Tribunal considered that it was reasonable to grant the order under Ground 8A.

43. The Tribunal suspended execution of the order in terms of s20(2)(a) of the Housing (Scotland) Act 1988 for a two-week period in recognition that the Respondent and her family require to obtain other accommodation suitable for them and have yet to do so.

44. The Tribunal made no order in terms of Grounds 11 and 12 of Schedule 5 of the Housing (Scotland) Act having granted the Order under ground 8A of Schedule 5 of the 1988 Act at the request of the Applicant.

## **Decision**

The Tribunal determined that a possession order be granted in terms of Ground 8A of Schedule 5 of the Housing (Scotland) Act 1988 and suspended execution of the order until 9<sup>th</sup> June 2023 in terms of section 20(2)(a) of the Housing (Scotland) Act 1988. The Tribunal made no order in terms of Grounds 11 and 12 of the 1988 Act.

## **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.**

\_\_\_\_\_  
**Legal Member/Chair**

**25.4.23**  
\_\_\_\_\_  
**Date**