



**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/19/3007

**Re: Property at 28 Bavelaw Road, Balerno, Edinburgh, EH14 7AD (“the
Property”)**

Parties:

Mr John Whyte, 66/5 Ogilvie Terrace, Edinburgh, EH11 1NP (“the Applicant”)

**Miss Liane Newton, 28 Bavelaw Road, Balerno, Edinburgh, EH14 7AD (“the
Respondent”)**

Tribunal Members:

Fiona Watson (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that order is granted against the Respondent for
possession of the Property under section 18 of the Housing (Scotland) Act
1988.**

- Background
 1. An application dated 24 September 2019 was submitted to the Tribunal under Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a repossession order against the Respondent under Section 18 of the Housing (Scotland) Act 1988
- The Case Management Discussion
 2. A Case Management Discussion (“CMD”) took place on 3 December 2019. Both parties were in attendance. The Respondent indicated that she wished to defend the application on the basis that the arrears that the application



founded upon were not due. Accordingly, a Hearing was fixed for 30 January 2020 for evidence to be led.

- The Hearing
3. The Applicant was personally present. The Respondent was not present. On 29 January 2020 at 21.25 an email was sent by the Respondent to the Tribunal administration which stated that her daughter had had surgery that day and there were some complications. She stated *"I'm sorry but I can not attend the tribunal dated 30/01/2020 because of this. I was expecting to attend so I am sorry for the very late notice. We have vacated the property at 28 Bavelaw Road Balerno EH147AD as promised at the last meeting. Keys handed back to Brian Paul."*
 4. A separate application submitted under Rule 70 of the Rules was heard at the same time in relation to an application for a civil order for payment of rent arrears, under case reference FTS/HPC/CV/19.3008.
 5. The Applicant confirmed that the keys had not been handed back to Brian Paul. Whilst he didn't think the Respondent was now living in the property, no keys had been returned. He wished the Hearing to proceed in her absence.
 6. The Tribunal noted that the Respondent's email did not make any request for a postponement of the Hearing. It also noted that Ms Newton had not lodged any documentation as directed within 7 days of the CMD, to demonstrate her position that there had been repairing issues in the property and that she had withheld rent on that basis. Taking into account the Tribunal's overriding principles, it decided to proceed with the Hearing in the Respondent's absence.
 7. The Applicant confirmed that no further rent had been paid. The rent statement lodged with the application up to 1 September 2019 showed a balance of £42,512.27. The Tribunal noted that the statement commenced June 2013. Accordingly it appeared to the Tribunal that the arrears accrued between 1 June 2013 and 30 September 2014 would have prescribed in terms of the Prescription and Limitation (Scotland) Act 1973, in that said portion of the debt was more than 5 years old. The Applicant had no submissions to make on this point.
 8. The Applicant submitted that he was now behind in his own rent in his sheltered housing as he was receiving no rent from the Respondent. He was unable to claim Housing Benefit due to him owning the property in question. His friend was assisting him with payment of his rent meantime. The Applicant disputed that the list of repairing issues lodged by the Respondent in advance of the CMD was true. He confirmed that he had instructed a joiner to replace the doors, and that he had an electrician attend at the property to carry out an inspection of a light fitting which had been reported as faulty. No further issues were reported to him. The Respondent had refused to allow the electrician access to the cupboard which contained the electricity meter so he



was unable to complete the work. He did not believe that she was withholding her rent, but instead just simply was not paying. The Respondent had previously been in receipt of Housing Benefit but this had stopped due to a change in her circumstances. He had never agree to reduce the monthly rental due, to accommodate any lesser payment being paid by Housing Benefit,

9. The Tribunal heard evidence from Brian Paul who confirmed that he had not had any contact with the Respondent, nor had she returned keys to him.

- Findings in Fact

10. The Tribunal made the following findings in fact:

- (i) The parties entered into a Short Assured Tenancy Agreement (“the Agreement”) which commenced 1 June 2013;
- (ii) A Form AT6 under section 19 of the 1988 Act were served on the Respondent on 26 March 2019 by sheriff officer delivery;
- (iii) The Form AT6 under section 19 of the 1988 Act relied on grounds 8, 11 and 12 under Schedule 5 to the 1988 Act;
- (iv) The Form AT6 under section 19 of the 1988 Act advised that proceedings would not be raised before 10 April 2019;
- (v) The Respondent had failed to return the keys to the Property to the Applicant.

- Reasons for Decision

11. Section 18 of the 1988 Act states as follows:

18 (1) The First-tier Tribunal shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act.

(2) The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.

(3) If the First-tier Tribunal is satisfied that any of the grounds in Part I of Schedule 5 to this Act is established then, subject to subsections (3A) and (6) below, the Tribunal shall make an order for possession.

(3A) 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.

(4) If the First-tier 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.

(4A) 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.

(5) Part III of Schedule 5 to this Act shall have effect for supplementing Ground 9 in that Schedule and Part IV of that Schedule shall have effect in relation to notices given as mentioned in Grounds 1 to 5 of that Schedule.

(6) 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.

(6A) Nothing in subsection (6) above affects the First-tier Tribunal's power to 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, where the ground for possession is Ground 15 in Part II of Schedule 5 to this Act.

(7) Subject to the preceding provisions of this section, the First-tier Tribunal may make an order for possession of a house on grounds relating to a contractual tenancy which has been terminated; and where an order is made in such circumstances, any statutory assured tenancy which has arisen on that termination shall, without any notice, end on the day on which the order takes effect.

(8) In subsections (3A) and (4A) above—

(a) "relevant housing benefit" means—

(i) any rent allowance or rent rebate to which the tenant was entitled in respect of the rent under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971); or



(ii) any payment on account of any such entitlement awarded under Regulation 91 of those Regulations;

(aa) "relevant universal credit" means universal credit to which the tenant was entitled which includes an amount under section 11 of the Welfare Reform Act 2012 in respect of the rent;

(b) references to delay or failure in the payment of relevant housing benefit or relevant universal credit do not include such delay or failure so far as referable to any act or omission of the tenant.

12. Ground 8 of Schedule 5 to the 1988 Act states as follows:

Both at the date of the service of the notice under section 19 of this Act relating to the proceedings for possession and at the date of the hearing or the date of the case management discussion, whichever is the earlier, at least three months rent lawfully due from the tenant is in arrears.

13. Ground 11 of Schedule 5 to the 1988 Act states as follows:

Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.

14 Ground 12 of Schedule 5 to the 1988 Act states as follows

Some rent lawfully due from the tenant—

(a) is unpaid on the date on which the proceedings for possession are begun; and

(b) except where subsection (1)(b) of section 19 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.

15. The Tribunal was satisfied that the grounds relied upon in the Form AT6 had been met. At the date of service of the AT6 on the Respondent, there were rent arrears of £21, 348.42. The monthly rent was £850. At the date of the Hearing, the arrears stood at £42,512.27. The Tribunal deducted the prescribed sum of £4,099.97 from this, leaving a balance due of £38,412.30. Accordingly, both at the date of service of the AT6 and at the date the case called before the Tribunal for the Hearing, there were at least three months of arrears due. Further, in terms of Ground 11 the Tribunal was satisfied that the



Respondent had persistently delayed paying rent which has become lawfully due. In terms of Ground 12, the Tribunal was satisfied that some rent was lawfully due. Accordingly, the Applicant was entitled to the Order for Repossession as sought.

- Decision

16. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for possession of the Property under section 18 of the Housing (Scotland) Act 1988.

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

30/01/2020

Date