

Housing and Property Chamber
First-tier Tribunal for Scotland



**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/19/4019

Re: Property at 2 Herald Avenue, Arbroath, DD11 4JJ (“the Property”)

Parties:

Mrs Gayle Langlands, 54 Dreelside, Anstruther, KY10 3EF (“the Applicant”)

Mr Robert Whittet, 2 Herald Avenue, Arbroath, DD11 4JJ (“the Respondent”)

Tribunal Member:

Nicola Irvine (Legal Member)

Decision in absence of the Respondent

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to the order sought for recovery of possession of the property.

Background

The Applicant submitted an application seeking an order to evict the Respondent from the property at 2 Herald Avenue, Arbroath, DD11 4JJ. The Tribunal intimated the application to the parties by letter of 28th January 2020 and advised them of the date, time and place of today’s case management discussion. In that letter, the parties were also told that they required to attend the case management discussion and were informed that the Tribunal could make a decision today on the application if the Tribunal has sufficient information and considers the procedure to have been fair. The Respondent was invited to make written representations by 18th February 2020. No written representations were received by the Tribunal.

At 09:44 on the morning of the case management discussion, the Tribunal received a request by email from the Respondent to postpone the case management discussion. In that email, the Respondent indicated that he had “paperwork/evidence...along with

the correct tenancy agreement". However, no indication was given by the Respondent about the nature of the paperwork.

The Case Management Discussion

The Applicant was represented by Mr M Kemp, solicitor.

The Tribunal dealt first of all with the request to postpone the case management discussion. The Tribunal was provided with a copy tenancy agreement which differed from the tenancy agreement lodged. The copy tenancy agreement produced bears to have been signed by both parties and is dated 15th October 2012. The Applicant's representative opposed the application to postpone the case management discussion. He advised that the Respondent has failed to engage with the Applicant in trying to resolve matters. He advised that there has been correspondence passing between the parties' representatives in relation to required repairs; however, the Respondent has not responded to contact to arrange those repairs. The Tribunal was advised that an order has previously been granted by the Tribunal against the Respondent for payment of £6,180 in respect of rent arrears and since then, further rent arrears have accrued of over £7,200. The Applicant's representative advised that the non payment of rent is causing the Applicant financial hardship and any delay in the Tribunal considering the application deepens that hardship.

Having considered the request to postpone the case management discussion and having heard submissions, the Tribunal refused the request. The case management discussion therefore proceeded in the absence of the Respondent.

The Applicant's representative advised that the Applicant seeks to rely upon Ground 8 of Schedule 5 of the Housing (Scotland) Act 1988, which is a mandatory ground of eviction, if established. Reference was made to the rent statement which has been produced. It shows rent arrears amounting to £7,200 as at 16th December 2019. The Applicant's representative advised that no payments of rent have been made, so the rent arrears have increased further. The Applicant's position is that arrears of rent have accrued since February 2019 and no rent has been paid by the Respondent since April 2019. If the Applicant recovers possession of the property, she intends to sell it.

Findings in Fact:

1. The Applicant and the Respondent entered into a Tenancy Agreement dated 15th October 2012.
2. The rent payable was £800 per calendar month, payable in advance.
3. The Applicant's agent served notice in terms of Section 19 of the Housing (Scotland) Act 1988 on 30th August 2019 indicating that the Applicant intended to raise proceedings for possession of the property not before 1st December 2019.

4. The Applicant's agent served a Notice to Quit on 30th August 2019 indicating that the Respondent should remove from the property on or before 30th November 2019.
5. As at 16th December 2019, the Respondent had incurred rent arrears amounting to £7,200.
6. As at the date of the Section 19 notice and as at today's date, more than three months rent lawfully due from the tenant is in arrears.
7. The Applicant is entitled to the Order sought for repossession.

Reason for Decision

The Tribunal must balance the interests of both parties. The Respondent indicated in his email that he had paperwork/evidence to produce. He gave no indication of the nature of that paperwork. There was nothing to indicate that the Respondent challenges the claim by the Applicant that more than 3 months' rent lawfully due remains unpaid. The Respondent had an opportunity to lodge written representations in advance of the case management discussion but did not do so. The Applicant advised that she is suffering financial hardship as a result of non payment of rent. In all of those circumstances, the Tribunal was not persuaded that it would be in the interests of justice to postpone the case management discussion.

The Tribunal proceeded to consider the merits of the application and did so on the basis of the written documents which were before it and the submissions made at the case management discussion. The Applicant's representative invited the Tribunal to make the Order sought. The Applicant relied upon Ground 8 of Schedule 5 of the 1988 Act. The Tribunal was satisfied that Ground 8 was established.

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.

Nicola Irvine

Legal Member/Chair

3rd March 2020

Date