

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 (“the 1988 Act”) and Rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/EV/19/3360

**Re: Property at 33 Brookfield Place, Alva, FK12 5AB
 (“the Property”)**

Parties:

**Beatsons Building Supplies, Whins Road, Alloa, FK10 3TA
 (“the Applicant”)**

**Mailers Solicitors, 2A King Street, Stirling, FK8 1BA
 (“the Applicants’ Representative”)**

**Mr Valdemar Sardeki, 33 Brookfield Place, Alva, FK12 5AB
 (“the Respondent”)**

Tribunal Member:

Susanne L. M. Tanner Q.C. (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) was satisfied that Ground 8 in Part II of Schedule 5 to the 1988 Act were established by the Applicant, in that both at the date of service of the notice under section 19 of the 1988 Act relating to proceedings for possession on 16 August 2019 and at the date of the hearing on 9 January 2020 at least three months’ rent lawfully due from the Respondent was in arrears; the arrears are not a consequence of a delay or failure in the payment of relevant housing benefit; and made an order for possession in terms of Section 18(3) of the 1988 Act.

Reasons

1. Procedural Background

1.1. The Applicants' Representative made an application to the tribunal on 18 October 2019 in terms of Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act") and Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").

1.2. The Applicant seeks the Respondent's eviction from the Property in terms of Section 18 of the 1988 Act under Grounds 8, 11 and 12 of Schedule 5 to the 1988 Act.

1.3. The Applicants' Representative lodged with the Application:

1.3.1. A paper apart for Ground 5 to the Application;

1.3.2. a copy of a tenancy agreement dated 1 April 2007;

1.3.3. a copy of a Notice to Quit dated 28 February 2019; with proof of service on 28 February 2019;

1.3.4. A copy of a Notice to Quit dated 16 August 2019; with proof of service on 16 August 2019;

1.3.5. A copy of an AT6 notice dated 16 August 2019;

1.3.6. Rent statements;

1.3.7. Letter from the Applicant's Representative to the Respondent dated 9 March 2018 regarding rental payments;

1.3.8. Time to Pay Application by the Respondent in application CV/19/1280;

1.3.9. Decision of the tribunal in relation to application CV/19/1280 dated 30 July 2019.

1.4. The tribunal's administration obtained the title deeds for the Property which show that the Property is owned by John Marshall Junior and Robert Marshall, both Greenacres, Back Road, Alva. The tribunal's administration obtained the Landlord registration details for the Property which show that it was registered by Beatson Building Supplies.

- 1.5. A legal member acting with the delegated powers of the Chamber President considered the Application and on 7 November 2019 further information was requested from the Applicant's Representative, namely a Section 11 notice and an explanation as to which Notice to Quit was being relied upon.
- 1.6. On 8 November 2019, the Applicant's Representative produced a copy of the same paper apart for Section 5 which had been submitted with the Application together with additional explanation in a cover letter, stating that a Notice to Quit was given on 28 February 2019 which had the effect of changing the tenancy from a contractual assured tenancy to a statutory assured tenancy. Non-payment of rent resulted in the service of a Notice to Quit and Form AT6 on 16 August 2019, founding upon grounds 8, 11 and 12. The AT6 was served on 16 August 2019 on the basis of grounds 8, 11, and 12. The AT6 stated that 2 weeks had to elapse before any proceedings were raised (which ran out on 5 September 2019). The second notice to quit ran out on 27 September 2019. Had proceedings been raised prior to 27 November the application for possession would have stated that an order for possession was sought for a date no earlier than 27 September 2019. In the event proceedings were raised after that date (on 18 October 2019).
- 1.7. On 13 November 2019, the Applicant's Representative produced a Section 11 notice with proof of service.
- 1.8. On 21 November 2019, the Application was accepted for determination by a tribunal. Both parties were notified by letters dated 29 November 2019 of the date, time and place of Case Management Discussion ("CMD") in relation to the Application on 9 January 2020. The Respondent was invited to make written representations in response to the Application by 20 December 2019. Both parties were advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this will not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair. The Application paperwork and notification was served on the Respondent by Sheriff Officers on 3 December 2019.
- 1.9. The Respondent did not submit any written representations in response to the Application or any response to the tribunal's Directions.
- 1.10. On 9 January 2020 the tribunal's administration obtained the company information from Companies House

2. Case Management Discussion (“CMD”): 9 January 2020, Wallace House, Maxwell Place, Stirling, FK8 1JU

2.1. Mr Ian McCulloch from the Applicant’s Representative attended the CMD.

2.2. The Respondent attended the CMD.

2.3. The tribunal chair explained the purpose of the CMD in terms of Rule 17 of the 2017 Rules and stated that as parties had already been notified, the tribunal could do anything at a CMD which it may do at a hearing, including issuing a decision.

2.4. Applicant’s representative’s submissions

2.5. The Tribunal chair raised a preliminary matter in relation to the title of the Respondent to seek the order for possession. Mr McCulloch stated that Application reflected the terms of the lease. John Marshall and Robert Marshall are father and son. They are two of the directors of a limited company Beatsons Building Supplies Limited, which trades as “Beatsons Building Supplies”, as a trading designation. The Respondent prepared the lease itself. Mr McCulloch stated that he did not wish to amend the Application and wished to proceed on with this Application on the same basis as the civil application CV/19/1280 in the trading name of the company.

2.6. Mr McCulloch explained that this is the third application made on behalf of the Applicants. The first application for possession was rejected because of the lack of specification of ground 8 in Clause 20th of the lease. On the basis of the case law the tribunal decided that it could not proceed. The contractual assured tenancy was thereafter terminated by the issuing of a Notice to Quit and the tenancy became a statutory assured tenancy. The second application was claim for payment of rent arrears and the tribunal reached a decision on 30 July 2019, making an order for payment for £3220.00, with a time to pay direction in the sum of £200.00 per week.

2.7. Mr McCulloch produced a Note dated 8 January 2020, summarising the procedural history and his submissions in relation to the present Application and a copy was produced for the tribunal and the Respondent.

2.8. Mr McCulloch submitted that the requirements for Ground 8 are met. He stated that the Notice to Quit dated February 2019 is being relied upon to say that it changed from a contractual assured tenancy to a statutory assured tenancy from 1 May 2019. The AT6 form dated 16 August 2019 stated that proceedings would not be raised before 5 September 2019. He stated that there was a Notice to Quit served at the same time as the AT6, with 40 days’ notice. He

stated that the two week period referred to in the AT6 expired on 5 September 2019, but if proceedings had been raised immediately thereafter he would not have been asking for possession prior to 27 September 2019 which would be the date of expiry of the 40 day notice to quit. The application was raised on 18 October 2019. A second Notice to Quit was served because of rent arrears because the order in the civil case related to previous rent arrears of £3220.00 which had been admitted and there were additional rent arrears in excess of three months.

2.9. Mr McCulloch stated that by 16 August 2019 three months' rent arrears were due in addition to the rent arrears which had been the subject of the civil application for a payment order, less payments made towards that balance in terms of the time to pay direction; and ongoing rental payments which fell due on 1st of each month from May 2019 onwards which had not been paid. The total outstanding as at 16 August 2019 was £1140.00 in respect of rent arrears, plus £3220.00 less payments of £600.00 made on The rent arrears on 9 January 2020 were stated to be £3420.00, in addition to the balance of £520.00 in relation to the payment order and time to pay direction. Mr McCulloch pointed to the note which included details of the payments he has been told have been made from 7 August 2019 to date, towards the sums due in terms of the payment order and time to pay direction. The last payment he had been told about by the Applicant is the one made on 29 November 2019. He stated that he had taken instructions on Tuesday 7 January 2020. He accepted that there may be a further payment or payments which the Respondent may be able to provide evidence of which would reduce the amount of rent arrears.

2.10. Respondent's submissions

2.11. The Respondent admitted that the rent arrears were as stated at the time that the AT6 was served on 16 August 2019, namely three months' rent of £380.00 due on 1 May, 1 June and 1 July 2019, totalling £1,140.00. He accepted that as at that date he had also owed the amount in the order in CV/19/1280 dated 30 July 2019 of £3,220.00, less two payments of £300.00 made towards that balance on 7 and 16 August 2019.

2.12. In relation to the level of arrears as at 9 January 2020, the Respondent stated that he accepted the figure on the statement dated 8 January 2020 in respect of nine months' rent from 1 May 2019 to 1 January 2020. He admitted arrears of £3420.00.

2.13. In relation to the amount said to be due in terms of the payment order, he stated that he accepted that subject to the deduction of one additional payment which was made on 6 January 2020, for £200.00. He stated that he

had made the payments in terms of the time to pay direction electronically using his internet banking and he consulted his account to confirm that the payment was made on 6 January 2020. He admitted that £320.00 was currently outstanding in terms of the payment order.

2.14. He stated that he was not working in December 2019 and that is why he had fallen behind with payments. He stated that he intends to make a further payment on Friday 10 January 2020 and then a further payment to clear off the debt from the order made in the civil application.

2.15. Applicant's Representative

2.16. Mr McCulloch submitted that as three months' arrears were £1,140.00, there were more than three months' rent arrears both at the date of service of the AT6 notice and as at 9 January 2020. His position was that the Applicants are entitled to an order for possession in terms of Ground 8 and Section 18 of the 1988 Act.

3. The tribunal makes the following findings-in-fact:

3.1. There was a contractual assured tenancy between the Applicant and the Respondent for the Property until 1 May 2019.

3.2. Since 1 May 2019 the Respondent has had a statutory assured tenancy for the Property.

3.3. Rent is payable by the Respondent to the Applicant in the sum of £380.00 per calendar month, monthly in advance, on 1st of each month.

3.4. On 30 July 2019 the tribunal made a decision in a civil application CV/19/1280 by the Applicant against the Respondent and made a payment order for £3220.00 in respect of rent arrears to 30 April 2019, with the Respondent being given time to pay at the rate of £200.00 per week.

3.5. The Respondent has made payments of £2900.00 to 6 January 2020 in respect of the payment order, leaving £320.00 outstanding.

3.6. Rent arrears have accrued in the sum of £380.00 per calendar month from 1 May 2019 to 1 January 2020.

3.7. The AT6 (Section 19 notice) was served on the Respondent on 16 August 2019.

3.8. As at 16 August 2019, the Respondent had rent arrears of £1140.00 in respect of rent due on 1 May, June and July 2019.

3.9. The AT6 notice included notice that the Applicants were intending to raise proceedings for possession of the Property on Grounds 8, 11 and 12 of Schedule 5 to the Housing (Scotland) Act 1988 (“the 1988 Act”).

3.10. As at the date of the hearing on 9 January 2020, there were rent arrears of £3420.00 for the period 1 May 2019 to 1 January 2019.

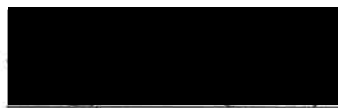
3.11. The rent arrears are not a consequence of a delay or failure in the payment of Housing Benefit or relevant universal credit.

3.12. Discussion

3.13. The tribunal was satisfied on the basis of the findings in fact that Ground 8 in Part II of Schedule 5 of the Act are established, in that both at the date of service of the notice under section 19 of the 1988 Act relating to proceedings for possession on 16 August 2019 and at the date of the hearing on 9 January 2020 at least three months’ rent lawfully due from the Respondent was in arrears. The arrears represent unpaid rent from 1 May 2019 to 1 January 2019, in the sum of £3,420.00. Those arrears are in addition to and separate from the sum of £320.00 due by the Respondent to the Applicant in terms of a payment order and time to pay direction dated 30 July 2019, following a payment of £200 by the Respondent on 6 January 2020 (which was not reflected in the Applicant’s Representative’s statement of 8 January 2020). The tribunal was satisfied that the rent arrears are not a consequence of a delay or failure in the payment of relevant housing benefit. The tribunal was therefore required to make an order for possession in terms of Section 18(3) 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.



**Susanne L. M. Tanner Q.C.
Legal Member/Chair**

9 January 2020