



**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/23/2088

**Re: Property at 53 Melrose Road, Greenfaulds, Cumbernauld, G67 4AZ (“the
Property”)**

Parties:

**Mr Stephen Anderson, 37 Hawthornden Avenue, Ellenbrook, Perth, Western
Australia 6069, Australia (“the Applicant”)**

**Miss Alison Hamilton, 53 Melrose Road, Greenfaulds, Cumbernauld, G67 4AZ
 (“the Respondent”)**

Tribunal Members:

Neil Kinnear (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**

Background

This was an application dated 7th September 2023 brought in terms of Rule 65 (Application for order for possession in relation to assured tenancies) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant provided with his application copies of the short assured tenancy agreement, notice to quit, section 19 notice (form AT6), Section 11 notice, rent arrears statement, pre-action correspondence and relevant executions of service.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The form AT6 intimated to the tenant that the landlord intended to raise proceedings for possession of the house on grounds 8 and 11 of Schedule 5 to the *Housing (Scotland) Act 1988*.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 27th November 2023, and the Tribunal was provided with the execution of service.

The Tribunal received an e-mail from the Respondent dated 21st December 2023, in which she advised that she accepted that she had accumulated substantial rent arrears and was looking for alternative accommodation. She indicated that she had been suffering from a health condition which might require treatment and asked for a postponement of the Case Management Discussion.

The Applicant advised the Tribunal in response that he was prepared to postpone the Case Management Discussion but only for a short period of two to four weeks. The Tribunal had no availability within that timescale and parties were advised that the Case Management Discussion set for 19th January 2024 would proceed.

Case Management Discussion

A Case Management Discussion was held at 10:00 on 19th January 2024 by Tele-Conference. The Applicant did not participate, but was represented by Ms Cramb, letting agent. The Respondent did not participate, nor was she represented.

Ms Cramb invited the Tribunal with reference to the application and papers to grant the order sought on ground 11 of Schedule 5 to the *Housing (Scotland) Act 1988*. The Respondent had been in arrears for a prolonged period, and as at 19th January 2024 rent arrears totalled £7,440.00. The last payment of rent made by the Respondent was on 30th June 2023. The monthly rental due in terms of clause 2 of the tenancy agreement is £620.00 per month.

Ms Cramb explained that the Applicant was sympathetic to the Respondent's various difficulties, but that he was now struggling to pay his own domestic mortgage and the mortgage on the Property in circumstances where he had received no payments of rent for seven months and rent arrears represented nearly twelve months' rent.

Statement of Reasons

In terms of Section 18(4) of the Act, if the 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.

Section 18(4A) of the Act provides that in considering for the purposes of subsection (4) above whether it is reasonable to make an order for possession on Ground 11 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.

The Tribunal was satisfied that ground 11 contained in Part 2 of Schedule 5 to the Act had been established, and considered that it was reasonable to make an order for possession. The Tribunal was not satisfied that rent is in arrears as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit. There was no evidence to establish any such reason for rent arrears.

The Tribunal was satisfied that the Applicant had complied with the pre-action requirements under the *Rent Arrears Pre-action Requirements (Coronavirus) (Scotland) Regulations 2020*.

In the case of *City of Glasgow District Council v Erhaiganoma* 1993 SCLR 592, The Inner House of the Court of Session stated at page 594 that “Where prima facie reasonableness has been made out, we think that it is then for the tenant to put circumstances before the court to show otherwise.”.

In this application, the Respondent had not responded to this application advancing any arguments that it was not reasonable to issue an order for possession, and had not participated in the Case Management Discussion. The Respondent had put forward no circumstances to show that it would not be reasonable for the Tribunal to issue an order for possession. The arrears of rent are substantial.

Having considered the whole circumstances, the Tribunal was satisfied that it was reasonable to issue an order for possession.

Decision

In these circumstances, the Tribunal made an order for possession of the house let on the tenancy as sought in this application.

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.

Neil Kinnear

19th January 2024

Legal Member/Chair

Date