

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/23/4432**

**Re: Property at 32 2/L Finavon Street, Dundee, DD4 9DX (“the Property”)**

**Parties:**

**Mr Barrie Gray, 59 Clepington Road, Dundee, DD4 7EP (“the Applicant”)**

**(“the Applicant’s Representative”)**

**Miss Claire Louise Dodds, 32 2/L Finavon Street, Dundee, DD4 9DX (“the Respondent”)**

**Dundee Law Centre 163 Albert Street Dundee, DD4 6PX (“the Respondent’s Representative”)**

**Tribunal Members:**

**Ms. Susanne L. M. Tanner K.C. (Legal Member)**

**Mrs. Mary Lyden (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) was satisfied that Grounds 11 and 12 in Part II of Schedule 5 to the 1988 Act were established by the Applicant, in that the Respondent has persistently delayed paying rent which has become lawfully due; some rent lawfully due from the Respondent was unpaid on the date on which proceedings for possession were begun and the Respondent was in arrears at the date of service of the notice under section 19 of the 1988 Act; considered that it was reasonable to make an order for possession; and made an order for possession in terms of Section 18(3) of the 1988 Act.**

## Reasons

### Procedural Background

1. The Applicant's Representative made an application to the tribunal on 11 December 2023 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").
2. At that time, the Applicant was seeking the Respondent's eviction from the Property in terms of Section 18 of the 1988 Act under Ground 8A of Schedule 5 to the 1988 Act. The Application was later amended to proceed under Grounds 11 and 12 of Schedule 5 to the 1988 Act, as discussed below.
3. The Applicant lodged with the Application:
  - 3.1. a copy of the Assured Tenancy agreement;
  - 3.2. a copy of the AT6 Notice dated 26 September 2023;
  - 3.3. a copy of the Notice to Quit dated 26 September 2023;
  - 3.4. proof of service of the AT6 and Notice to Quit;
  - 3.5. Section 11 Notice and proof of service; and
  - 3.6. Rent ledger from 9 January 2023 to 9 January 2024.
4. The Application was accepted for determination.
5. The Respondent appointed a representative in March 2024.
6. The first two Case Management Discussions (CMDs) took place on 27 March 2024 and 28 May 2024. The Respondent was represented at both Case Management Discussions. Notes of both Case Management Discussions were issued to parties' representatives. The said Notes are referred to and incorporated in this statement of reasons.
7. On 10 April 2024, the Application was amended to delete Ground 8A and proceed under Grounds 11 and 12 of Schedule 5 of the 1988 Act.
8. On 15 April 2024, a new AT6 was served by Sheriff Officers on the Respondent, on Grounds 11 and 12 of Schedule 5 of the 1988 Act.
9. The Applicant's Representative submitted an updated rent statement on 12 August 2024.

10. Prior to the third CMD, the Respondent's representative submitted an update in relation to her submissions about the Respondent's benefits. The Applicant's Representative sent a written response.

### **Third CMD: 13 August 2024 at 1000h, teleconference**

11. Ms Wheelan attended from the Applicant's Representative. Ms McLanders attended from the Respondent's representative.

### **Respondent's Representative's submissions**

12. Ms McLanders provided an update in respect of the Respondent's benefits claims. The respondent has been in receipt of Universal Credit since April 2024 (the exact date unknown). She is in receipt of the housing costs element of that benefit. The Respondent said that it was £475.00 but the rent is £478.00, so her representative said that she is receiving the full rent amount. The representative confirmed that the rent schedule is correct. The Universal Credit is paid directly to the Respondent. Ms McLanders has advised her client that she has to pay her rent forward. However, in relation to her housing costs being paid over she has no proposals to make for payment of the arrears of the rent. Ms McLanders said that all she can do for her client is to advise her of that. Ms McLanders said that her client is fully aware of the consequences of not paying the rent forward. Ms McLanders said that she was advised to attend the hearing (CMD) but she chose not to do that. Ms McLanders said that the Respondent chose to have the housing costs paid to her because she wanted to try to manage her money. Ms McLanders understands that the landlord can request direct payment but the Respondent would have to agree.

13. In relation to the discretionary Housing payment (DHP) which was discussed at the previous CMDs, the application was made in January 2024 and Dundee City Council had not considered it until 6 and 7 August 2024. It was reviewed by a senior manager. Ms McLanders has been advised that there will be no DHP paid, for two reasons: (1) there was an overpayment of Housing Benefit for a period of time because it was being paid at the original rent and not the reduced rent and (2) the only payment could have been £500 but because the housing payments are not being paid to the landlord no payment will be made.

14. Ms McLanders confirmed that the DHP application was made for a hardship payment for the arrears balance rather than paying for any additional under occupied bedrooms. When Ms McLanders spoke with the senior adviser from the Council after she reviewed the file, she advised that the housing benefit was overpaid meaning that they paid more anyway which is why they would not make an DHP. This is a three bedroomed property. She is under occupying it. Because

the rent charge is quite low the Local Housing Allowance covers that anyway. Ms McLanders believes that there were different amounts of rent that were told to the Council. The Universal Credit is now correct. There was previously an underpayment because she had a child.

15. Ms McLanders said that at the moment the respondent gets £681.37 Universal Credit per month personal element and housing costs of £478 per month. There is no deduction for council tax. She also receives £26.70 per week for Scottish Child Benefit and child benefit of £25.60 per week. Ms McLanders said that she had spoken to her client this morning and she has received confirmation that she has limited capability for work related activity because of her mental health.
16. Ms McLanders said that the application for eviction (an order for possession) remains opposed on the grounds of reasonableness. Ms McLanders said that she has provided everything they have. Her client has not provided any reason as to why she is not paying towards her rent account. Ms McLanders said that there was a discussion in around April 2024 about the property possibly being transferred to Abertay (a registered social landlord (RSL)). Since this point her client has not been prepared to discuss any proposals to pay her arrears and rent. Her client would like to become an RSL tenant but she is aware that this may not happen. She is not looking at making any proposals for arrears. Ms McLanders said that her client suffers from quite severe anxiety. She also has a lot of issues with her daughter at the moment which she understands that the landlord is aware of. Her daughter is currently going through a CAMHS referral.
17. Ms McLanders confirmed that the respondent has made an application to Dundee City Council for alternative housing.

### **Applicant's representative's submissions**

18. Ms Wheelan confirmed that she wished to move for the order for possession to be made today.
19. Ms Wheelan said that her client has been asking why the rent has not been paid, particularly after the submissions were received which showed that the Respondent has been in receipt of Universal Credit with a housing element since April 2024. The rent ledger £3784.79 in arrears. She said that is a real shame to hear that the tenant has had Universal Credit coming in for this time and has not paid the rent. The applicant has had no communication from the respondent regarding the universal credit and first became aware of it when her representative lodged the written submissions. The Applicant has known the Respondent for a very long time, longer than Rent Locally and has tried to help her. She finds that she can speak to him through text or call. Ms Wheelan referred to the discussion

at the last CMD about a £400 rental payment which had come in. They asked for that to be transferred and never received that. It has now become quite clear that the money has been coming in but the tenant has been keeping it.

20. Ms Wheelan said that no sale of the Property has been agreed. The Abertay Housing Association floated a sale of the house. It would be a lower rent but there are caveats. They would look at arrears and payments. There has to be evidence of payment of rent. The arrears are now £3784.79. Ms Wheelan does not have any other information that there is a movement forward to a sale. It was discussed with the tenant to make her pay her rent. There is absolutely nothing in place. There is no guarantee, especially as there is no DHP and the arrears will not be paid off.
21. Ms Wheelan said that it would be reasonable for the tribunal to make the order. There are arrears of £3784.79 now. There is no rent coming in and no proposals to pay it. This is a 3 bedroomed property. With the LHA rates, her client would get £500 more per month. He has known the tenant a very long time and has been very reasonable by lowering the rent. He feels cheated now because he had been very generous. He is very disappointed to find out that the rent has been paid and the tenant has kept it. He has also looked for opportunities like a sale. Ms Wheelan submitted that it is a reasonable option to ask for eviction at this point. Rent has been kept by the tenant and advice has been given by the representative that she should give the rent over. The landlord does have costs including a mortgage (amount unknown), insurance, repairs which he is under a legal obligation to deal with and a management fee. The arrears have increased and the eviction has been going on for some time. The Applicant has 20 to 30 properties. He is an experienced landlord. This is the only property he has got where he has an issue like this.

### **Respondent's Representative**

22. Ms McLanders said that her client suffers from extremely poor mental health and this will have an impact on her.
23. In relation to the possibility of Abertay Housing Association, Ms McLanders thinks that putting it to her was the wrong thing to do at that point in order to get her to pay her rent. If the RSL purchased, the RSL could get the rent paid direct to them and she does not think that any debt would be relevant.
24. However, Ms McLanders does not have any proposals to make on behalf of her client in respect of arrears or rent as it falls due.
25. Ms McLanders said that her client does have a good relationship with the landlord. Ms McLanders said that she appreciates what the landlord is going through and

the costs involved. Her client has no proposals to make and she has been advised fully.

26. Ms McLanders said that there is also a child in the property that also has mental health issues. Ms McLanders said that her client has made an application to the local authority for housing. If the order is made, normally the homeless team would do a full assessment of the needs of her client and her child.

27. The tribunal adjourned to consider the Application and both parties' written and oral submissions.

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

28.1. There is a Short Assured Tenancy between the Applicant and the Respondent dated 9 April 2013.

28.2. The initial tenancy term was for the period 9 April 2013 to 10 October 2013. Since then the lease has tacitly relocated on a monthly basis.

28.3. The original rent payable in terms of the lease was £575.00 per calendar month payable monthly in advance on the date of entry and thereafter on or before 1<sup>st</sup> of each month.

28.4. The Respondent lives in the Property with her daughter.

28.5. The Property has three bedrooms and it is under occupied by the Respondent and her daughter.

28.6. During the tenancy the Applicant agreed to reduce the rent to £478.00 per calendar month to help the Respondent.

28.7. Since April 2024, the Respondent has been in receipt of Universal Credit with a housing component of £478.00, which is paid directly to her.

28.8. The housing component of the respondent's Universal Credit would cover her monthly rental payments in full.

28.9. There is no shortfall in the rental component of the Respondent's Universal Credit housing payment because the Applicant reduced the rent to £478.00, which is below the local housing allowance amount for a house of this size in this location.

28.10. The Respondent has not paid any rent to the Applicant in the period from April 2024 to 13 August 2024 despite being in receipt of the full amount of rent in her Universal Credit payments.

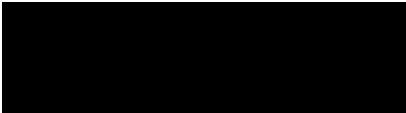
- 28.11. The Respondent accepts that the full amount of rent arrears as per the rental statement are due to the Applicant.
- 28.12. The Respondent has not made and does not intend to make any proposals to pay her rent arrears or to pay rent as it falls due.
- 28.13. There is no delay or failure in payment of the benefits to which the Respondent is entitled.
- 28.14. The Notice to Quit was served on 26 September 2023, giving the Respondent formal notice to quit the premises occupied by her by 10 December 2023.
- 28.15. The second Section 19 notice (AT6) was served on 15 April 2024.
- 28.16. The second AT6 notice specified that the Applicant was intending to raise proceedings for possession of the Property on Grounds 11 and 12 of Schedule 5 to the Housing (Scotland) Act 1988 ("the 1988 Act").
- 28.17. As at 15 April 2024, the date of service of the AT6 notice, the rent arrears were £3741.04.
- 28.18. As at 13 August 2024 the rent arrears are £3784.79.
- 28.19. The Respondent has not made any payment of rent since January 2024.
- 28.20. The Respondent has been in arrears of rent continuously since April 2024.
- 28.21. The Respondent has persistently delayed paying rent which has become lawfully due.
- 28.22. The rent arrears are not a consequence of a delay or failure in the payment of Housing Benefit or relevant universal credit.
- 28.23. The Respondent has made an application to the local authority for housing.
- 28.24. The Respondent is unemployed.
- 28.25. The Respondent intends to apply to the local authority homeless team to seek alternative housing if an order for possession is made.
- 28.26. The Applicant has to meet ongoing costs in connection with the Property, including mortgage, insurance, management charges and any costs of repairs as they fall due; and is suffering financially as a result of the Respondent's persistent rent arrears.

### **Section 18(4) of the 1988 Act**

29. The tribunal was satisfied that Grounds 11 and 12 of the 1988 Act had been established in that the Respondent has persistently delayed paying rent which has become lawfully due; some rent lawfully due from the Respondent was unpaid on the date on which proceedings for possession were begun and the Respondent was in arrears at the date of service of the notice under section 19 of the 1988 Act.
30. The tribunal was satisfied that in all of the circumstances that it was reasonable to make an order for possession in terms of Section 18(4) 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.**



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

**13 August 2024**