

**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)**

**Chamber Ref: FTS/HPC/EV/24/1456**

**Re: Property at 6 Harrietfield, Newton Don, Kelso, TD5 7SY (“the Property”)**

**Parties:**

**Balgonie Estates Ltd, Estate Office, Newton Don, Kelso, TD5 7SY (“the Applicant”)**

**Mr Stuart Roberston, Ms Cheryl Spoor, 6 Harrietfield, Newton Don, Kelso, TD5 7SY (“the Respondent”)**

**Tribunal Members:**

**Virgil Crawford (Legal Member) and John Blackwood (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**BACKGROUND**

1. The Applicant let the Property to the Respondent. The lease provided to the Tribunal was undated but confirmed the lease commenced on 1<sup>st</sup> September 2009. The lease is, therefore, an assured tenancy in terms of the Housing (Scotland) Act 1988 (“the 1988 Act”).
2. The Respondents fell into arrears of rent. As a result, the Applicant served a notice to quit upon each Respondent. Separately, a notice in terms of s19 of the 1988 Act – commonly referred to as a form AT6 - was served upon each Respondent. These notices intimated that eviction proceedings may be raised on grounds 11 (persistent delays in paying rent) and 12 (in arrears when

notice served and when proceedings begun) of Schedule 5 of the 1988 Act. These notices were served on 4<sup>th</sup> January 2024.

3. A notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority
4. Separately, the Applicants representatives had written to each Respondent, on various occasions, in compliance with the pre action protocol contained within The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
5. The Applicant thereafter presented two applications to the Tribunal, one seeking an order for eviction (EV/24/1456) and the other seeking an order for payment for arrears of rent (CV/24/1458). These applications were presented on 24 April 2024.
6. As at the date of the Application to the Tribunal, arrears of rent amounted to £12,200.00. Prior to the Case Management Discussion, the Applicant's representative submitted an updated rent statement to the Tribunal. This was intimated to the Respondent. This rent statement confirmed the arrears of rent, as at the date of the Case Management Discussion, amounted to not less than £14,750.00.

## **THE CASE MANAGEMENT DISCUSSION**

7. The Applicant was represented by Mr J Millar of Anderson Strathern LLP. The Respondents did not participate in the Case Management Discussion. The tribunal, however, was in receipt of a certificate of intimation by Sheriff Officers confirming that the proceedings had been intimated upon the Respondents. In the circumstances, the Tribunal was satisfied in terms of Rule 24 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the FTT Regs") that the respondent had received intimation of the date and time of the Case Management Discussion and considered that it was appropriate to proceed with the Case Management Discussion in the absence of the Respondents in accordance with Rule 29 of the FTT regs.
8. Mr Millar moved the tribunal to grant both an order for eviction and an order for arrears of rent.

## **Rent Arrears**

9. The rent statement provided to the Tribunal confirmed the arrears of rent amounted to £14,750.00. The last payment of rent received was as far back as December 2021. There were arrears before then also. Since then, no rental payments at all had been made.

10. Mr Millar moved the Tribunal to amend the amount claimed to £14,750.00. Given an updated rent statement had been timeously lodged with the Tribunal prior to the Case Management Discussion and also intimated to the Respondents, and in the absence of any opposition, the Tribunal allowed the amendment.
11. The arrears of rent are significant and longstanding. No explanation has been provided by the Respondents as to why rent has not been paid. No response has been received to correspondence sent in compliance with the pre action protocol.
12. In the circumstances, considering the up to date rent statement, and in the absence of any appearance by or on behalf of the Respondents, the Tribunal granted an order for payment in the sum of £14,750.00.
13. The Applicant's representative sought interest on that amount. Whether interest is awarded is a matter for the discretion of the tribunal. The tribunal agreed to award interest at a rate of 5% per annum, which is consistent with bank base lending rates as at the date of the Case Management Discussion.

### **Eviction**

14. Mr Millar advised the Tribunal that, as far as is known, the Respondents are still in occupation of the Property. There has, however, been no contact between the Applicant and the Respondents since 2021. There has been attempts at contact without success. There has been no response to correspondence forwarded to the Respondents, including correspondence in compliance with the pre action protocol.
15. The Applicant is not aware of any medical conditions affecting either Respondent. The Respondents have made to representations whatsoever to the Applicant in relation to the arrears of rent nor the proceedings before the Tribunal which have been intimated upon them. Their up to date personal circumstances are not known. As far as the Applicant is aware, the Respondents are the only occupants of the Property.
16. In the circumstances, having regard to the extensive rent arrears, the fact that no rent has been paid since December 2021 and there been no information presented to the tribunal on behalf of the Respondents to suggest that it is anything other than reasonable to grant an order for eviction, the Tribunal grants an order for eviction of the Respondents from the Property.

### **FINDINGS IN FACT**

17. The Tribunal found the following facts to be established: -

- a) The Applicant let the Property to the Respondent. The lease commenced on 1<sup>st</sup> September 2009. The lease is an assured tenancy in terms of the 1988 Act.
- b) Rent is payable at a rate of £425.00 per month.
- c) The Respondents fell into arrears of rent. Rent arrears existed prior to December 2021. Since then no payments of rent have been made.
- d) A notice to quit was served upon each Respondent.
- e) A notice in terms of s19 of the 1988 Act was served upon each Respondent. These notices intimated that eviction proceedings may be raised on grounds 11 and 12 of Schedule 5 of the 1988 Act. These notices were served on 4<sup>th</sup> January 2024.
- f) A notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority.
- g) The Applicants representatives had written to each Respondent, on various occasions, in compliance with the pre action protocol contained within The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. No response was received.
- h) Proceedings before the Tribunal were commenced on 24<sup>th</sup> April 2024.
- i) The Respondents have persistently delayed in paying rent.
- j) No payments have been made since December 2021.
- k) As at the date of service of the notices in terms of s19 of the 1988 Act, and as at the date of commencement of the proceedings before the Tribunal, the Respondents were in arrears of rent.
- l) There is no information to suggest the arrears of rent are not due to any delay nor failure in the payment of any relevant benefit.

## **DECISION**

The Tribunal granted an order against the Respondent for possession of the Property under section 18 and ground 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988.

Order not to be executed prior to 12 noon on 14<sup>th</sup> October 2024

## **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.**

# V.Crawford

6<sup>th</sup> September 2024

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Legal Member/Chair

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Date