



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 18 Housing (Scotland) Act
1988 (“the 1988 Act”)**

Chamber Ref: FTS/HPC/EV/24/3823

**Property at Flat 4F1, 2 Boroughloch Square, Edinburgh, EH8 9NJ (“the
Property”)**

Parties:

**Ardnastag Estates Limited, 12 Charterhall Road, Edinburgh, EH9 3HP (“the
Applicant”)**

**Ms Laura Springate, Flat 4F1, 2 Boroughloch Square, Edinburgh, EH8 9NJ
 (“the Respondent”)**

Tribunal Members:

Josephine Bonnar (Legal Member) and Ahsan Khan (Ordinary Member)

Decision - in absence of the Respondent

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for possession should be granted against
the Respondent in favour of the Applicant.**

Background

1. The Applicant seeks an order for possession in terms of Section 18 of the 1988 Act. An AT6 notice, Section 11 Notice, rent statement, and correspondence with the Respondent were lodged with the application. The AT6 and application form specify grounds 11 and 12 of schedule 5 to the 1988 Act. A related application for a payment order was also submitted.
2. A copy of the application was served on the Respondent, and parties were notified that a case management discussion (“CMD”) would take place on 19 March 2025 at 10am by telephone conference call and that they were required to participate. Prior to the CMD the Applicant lodged an updated rent statement and a request to amend the related application to reflect the increased arrears

of £20800

3. The CMD took place on 19 March 2025. The Applicant was represented by Ms Callaghan. The Respondent did not participate and was not represented.

Summary of discussion at the Case Management Discussion

4. Ms Callaghan told the Tribunal that the Respondent is still in occupation of the property. The letting agent was recently in contact with her to arrange access to the property. She responded to the emails although access did not take place. She has failed to respond to recent contact about the rent arrears.
5. The Tribunal noted that there is no tenancy agreement with the application. There is a letter to the Respondent dated 1 March 2017. Ms Callaghan said that the letter had been sent by the letting agent. The letter refers to information received from the Respondent that her father had died on 21 August 2016 and that she had been living at the property for at least two years before his death. The letter goes on to advise the Respondent that she has succeeded to the tenancy and become the statutory assured tenant. The letter requests payment of the rent due from the date of death and advises the Respondent that the rent will be £650 per month. Ms Callaghan advised the Tribunal that following receipt of that letter, the Respondent paid the arrears of rent and started making monthly payments of £650. She said that the Applicant does not have a copy of the original tenancy agreement due to the passage of time. The rent payments stopped in 2022. The current arrears are £21,450 as a further payment has become due since the updated rent statement showing a balance of £20,800 was lodged.
6. In response to questions from the Tribunal Ms Callaghan said that the Respondent is the sole tenant and is believed to be 47 years of age. In 2024 she advised the agent that she was employed by an agency called "Made to Clean". She last provided details of her income and outgoings in February 2023. She said that her income was £1110 per month and her outgoings £1036. No updated information has been forthcoming although the agent tries to make contact on a regular basis. The agent has tried to signpost her to advice services in relation to benefits but she has either been unwilling to apply for benefits or is not entitled. It is understood that she lives at the property alone.
7. In relation to the Applicant, Ms Callaghan said that it is a company which was set up to hold family properties. There are 27 residential properties and one commercial unit. There is a mortgage over the portfolio and the sum of £9000 needs to be repaid in relation to this property within 5 years. This is the only rental property with rent arrears. The Tribunal noted that the arrears are substantial, and that the Applicant has delayed before making the applications. Ms Callaghan said that the Applicant did not want to seek eviction because of the length of time that the Respondent has lived at the property. However, she does not engage with the agent, and they have been left with no option but to seek the order.

Findings in Fact

8. The Applicant is the owner and landlord of the property.
9. The Respondent is the statutory assured tenant of the property.
10. The Respondent is due to pay rent at the rate of £650 per month.
11. The Respondent owes the sum of £20,800 in unpaid rent to the Applicant.
12. The Applicant served an AT6 Notice on the Respondent on 14 February 2024
13. The Applicant has issued letters and emails in compliance with the Rent Arrears Pre Action-Protocol.
14. The Respondent has paid no rent since August 2022.

Reasons for Decision

15. The application was submitted with a letter to the Respondent which appears to establish that the Respondent succeeded to the tenancy of the property on 21 August 2017, following the death of her father, who was the original tenant of the property in terms of a regulated tenancy which started in 1967. The Applicant was unable to provide a copy of the tenancy agreement. However, the Tribunal was advised that the letter issued to the Respondent was in response to information and documentation provided by her. Furthermore, she paid rent following her succession to the tenancy at the rate stipulated in the letter. The Tribunal is satisfied that the Respondent became the statutory assured tenant of the property on 21 August 2017, in terms of Section 3A(1) and Schedule 1A of the Rent (Scotland) Act 1984.
16. As there is no contractual tenancy, the Applicants did not require to serve a Notice to Quit on the Respondent prior to raising proceedings. An AT6 notice was lodged, together with a Sheriff Officer certificate of service which establishes that it was served on 14 February 2024. The AT6 Notice is in the prescribed format and specifies grounds 11 and 12 of schedule 5. It states that the earliest date that proceedings can be taken is 29 February 2024, giving the Respondent two weeks' notice, as required by Section 19(4) of the 1988 Act. A copy of a section 11 Notice has also been lodged, with evidence that it was sent by email to the Local Authority. The Tribunal is satisfied that the Applicant has complied with Sections 19 and 19A of the 1988 Act.
17. Section 18 of the 1988 Act (as amended by the Coronavirus (Recovery and Reform) (Scotland) Act 2022 states:-

(1) The First-tier Tribunal shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in schedule 5 to the Act.

(4) If the First-tier Tribunal is satisfied that any of the grounds in Part i or 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.

(4A) In considering, for the purposes of subsection (4) above, whether it is reasonable to make an order for possession on Ground 11 or 12 in Part II of Schedule 5 to this Act, the First-tier Tribunal shall have regard in particular to-

(a) 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, and,

(b) The extent to which the Landlord has complied with the pre-action protocol specified by Scottish Ministers in regulations.

18. Ground 11 of Schedule 5 states, "Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.". Ground 12 states, "Some rent lawfully due from the tenant – (a) is unpaid on the date on which the proceedings for possession are begun: and (b) except where subsection 1(b) of Section 19 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings".

19. The Applicant submitted a rent statement with the application and an updated one prior to the CMD. Based on the rent statements and the information provided at the CMD, the Tribunal is satisfied that grounds 11 and 12 are established. The rent account has been in arrears since August 2022. At the time of service of the AT6 notices the Respondent owed over £13000, and this had increased to £20,800 by the date of the hearing.

20. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession and noted the following: -

(a) The Applicant has issued letters in compliance with the Rent Arrears Pre Action-Protocol. Their agent has also made considerable additional efforts to engage with the Respondent in relation to the arrears of rent.

(b) There is no information or evidence to suggest that the arrears are due to a delay or failure in the payment of a relevant benefit, such as housing benefit or universal credit.

(c) The rent arrears are substantial and are increasing. No payments have been since August 2022.

(d) The Respondent has failed to engage with the Applicant and has provided no reasons for her failure to pay rent.

21. Although some financial information was provided, the Tribunal is not persuaded that the Applicant has established financial hardship as a result of the arrears. However, for the reasons outlined in the preceding paragraph the Tribunal is satisfied that it would be reasonable to grant the order.

22. As the Applicant has complied with the requirements of the 1988 Act, and as the Tribunal is satisfied that it would be reasonable to grant the order, the Tribunal determines that an order for possession should be granted.

Decision

23. The Tribunal determines that an order for possession of the property should be granted against the Respondent.

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.

J Bonnar

Josephine Bonnar, Legal Member

19 March 2025