

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 Housing (Scotland) Act 1988 (“the 1988 Act”)

Chamber Ref: FTS/HPC/EV/24/3479

Re: Property at 29 Ashton View, Dumbarton, G82 5DP (“the Property”)

Parties:

Mr Ian Burns, 26 Kingswood Road, Bishopton, Renfrewshire, PA7 5LQ (“the Applicant”)

Ms Louise Kerr, 29 Ashton View, Dumbarton, G82 5DP (“the Respondent”)

Tribunal Members:

Josephine Bonnar (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 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. A tenancy agreement, AT6 notice, Section 11 Notice, rent statement, and WhatsApp correspondence were lodged with the application. The application form specifies ground 11 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 by Sheriff Officer, and parties were notified that a case management discussion (“CMD”) would take place on 8 May 2025 at 10am by telephone conference call and that they were required to participate.

3. The CMD took place on 8 May 2025. The Applicant participated and was represented by his wife, Mrs Lina Burns. The Respondent did not participate and was not represented.

Summary of discussion at the Case Management Discussion

4. Mrs Burns told the Tribunal that the Respondent is still in occupation of the property. They visited her, at her invitation, on 25 April 2025. She was decorating and had purchased a new suite. She mentioned that she had applied for a grant to help with the rent and arrears but gave them no specific information about whether she was likely to receive any money or how much it would be. Mrs Burns said that she had forgotten to submit an updated rent statement. However, no rent has been paid since the previous statement was lodged in January 2025 and the arrears have increased to £5478.60. The Tribunal noted that no evidence of compliance with the rent arrears pre action protocol had been lodged with the application. Mrs Burn said that they have attempted to contact the Respondent frequently. A letter advising her about where to get help was sent by email and post in April 2024. They have also sent numerous WhatsApp messages. The Respondent has mentioned seeking help from the CAB and Council, but they have no details of that. She has asked for details of the arrears on several occasions and has been given a rent statement. They have tried to work with her and asked her to make even small payments to the rent account, without success.
5. In response to questions from the Tribunal, Mrs Burns said that the Applicant has another 6 rental properties. These are all currently occupied by tenants, one of them by the Respondent's parents. At one point the Respondent's partner lived at the property with her but she lives there with her two children at present. Her daughter is 16, still at school but with a part time job. Her son is a bit younger than that. He is still of school age but is often at the property during the school day. At one time the Respondent had two part time jobs but when they met with her recently, she said that she had been off sick and was now only working a few hours a week. She did not give them any information about whether she is in receipt of benefits. Until 2021, she was in receipt of housing benefit but the Applicant is not aware of the present position. The property is a three-bedroom property. There is a large dog in the house, although no permission was sought from the Applicant. She does not clean up after the dog regularly and the garden is covered in dog faeces.
6. Mrs Burns said that the Applicant relies on the rental income from his properties. There is no mortgage over the property, but they have ongoing maintenance costs. They had to spend over £2000 on new gutters last year and recently there was a boiler repair and storm damage. The lack of rental income is therefore problematic. They have been patient and tried to work with the Respondent. At one point they reduced the rent. Although they recently increased it again, it is still less than the sum specified in the tenancy agreement.

Findings in Fact

7. The Applicant is the owner and landlord of the property.
8. The Respondent is the tenant of the property.
9. The Respondent is due to pay rent at the rate of £415 per month.
10. The Respondent owes the sum of £5478.60 in unpaid rent to the Applicant.
11. The Applicant served an AT6 Notice on the Respondent on 4 April 2024
12. The Respondent has paid no rent since November 2024.
13. The Applicant has provided the Respondent with information about the arrears, attempted to agree repayment arrangements and advised the Respondent where she can obtain help in relation to her rent and the arrears.
14. The Respondent resides at the property with two teenaged children.
15. The Applicant has 6 other rental properties. There is no mortgage over the property but there are ongoing maintenance costs. The Applicant relies on the rental income from the property.

Reasons for Decision

16. The application was initially based on grounds 8, 8A and 11 of schedule 5 of the 1988 Act. The Applicant then submitted an amended application on ground 11 only, when it was pointed out that grounds 8 and 8A had both been repealed. The application was submitted with a copy of a tenancy agreement which includes a list of all the grounds of possession contained within schedule 5. An invalid Notice to Quit was also submitted. However, as the Applicant is entitled to rely on Section 18(6) of the 1988 Act, he did not require to terminate the tenancy agreement before making the application. An AT6 notice was also lodged, with a Post Office certificate of posting. This establishes that it was served on 4 April 2024. The AT6 Notice is in the prescribed format and specifies grounds 8, 8A and 11 of schedule 5. It states that the earliest date that proceedings can be taken is 4 May 2024, giving the Respondent more than 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."

19. The Applicant submitted a rent statement with the application. Based on the rent statement and the information provided at the CMD, the Tribunal is satisfied that ground 11 is established. The rent account has been in arrears since March 2021. At the time of service of the AT6 notice the Respondent owed £3088.80, and this had increased to £5478.80 by the date of the CMD.

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

(a) The Applicant did not provide any evidence that he has complied with the Rent Arrears Pre Action-Protocol. However, at the CMD, he provided details of the efforts he has made to get the Respondent to address the arrears. This has included providing rent statements to show the level of arrears, sign posting her to advice agencies and attempting to negotiate repayment arrangements. He also reduced the rent to make it more affordable.

(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. The Respondent has not provided the Applicant or the Tribunal with any information about her current financial circumstances or her entitlement to benefits.

(c) The rent arrears are substantial and are increasing. No payments have been since November 2024.

(d) The Respondent resides at the property with two school aged children. There is no evidence that anyone in the household suffers from a health issue or disability.

21. Although some financial information was provided, the Tribunal is not persuaded that the Applicant has established financial hardship as a direct result of the arrears. However, he is having to maintain the property without any rental income. The Tribunal notes that the effect of eviction on the Respondent and her family is likely to be significant, particularly given the age of the children. However, the Respondent has not defended the application or asked the Tribunal to refuse the order. In the circumstances, 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.

Josephine Bonnar, Legal Member

Date: 8th May 2025

