



**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/24/5329

Re: Property at 115 Carrick Road, Lochside, Dumfries, DG2 9PZ (“the Property”)

Parties:

**Lowther Homes Limited, Wheatley House, 25 Cochrane Street, Glasgow, G1 1HL
 (“the Applicant”)**

**Ms Lynne Toner, 115 Carrick Road, Lochside, Dumfries, DG2 9PZ (“the
Respondent”)**

Tribunal Members:

Ruth O'Hare (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 the provisions of section 18 and grounds 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 (“the 1988 Act”) had been met in this case, and it would be reasonable to make an eviction order.

The Tribunal therefore made an eviction order under section 18 of the 1988 Act.

Background

- 1 This is an application for an eviction order under section 18 of the 1988 Act and Rule 65 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”). The Applicant relied upon grounds 11 and 12 of Schedule 5 of the 1988 Act.
- 2 The application was referred to a case management discussion (“CMD”) to take place by teleconference on 13 June 2025. The Tribunal gave notice of the CMD to the parties under Rule 17(2) of the Rules. Said notice was served upon the Respondent by sheriff officers on 27 March 2025. Both parties were invited to make written representations in advance of the CMD.

- 3 On 30 May 2025 the Tribunal received an email from the Applicant with an updated rent statement. The Tribunal received no written representations from the Respondent.

The CMD

- 4 The CMD took place on 13 June 2025 at 10am. Mr David Adams, Solicitor, of Wheatley Group represented the Applicant. The Respondent did not attend. Mr Adams explained that he had received correspondence that suggested she was aware of the CMD. The Tribunal delayed the start time for a short period before determining to proceed in her absence, noting that the Respondent had received proper notice of the CMD in accordance with Rule 17(2) of the Rules.
- 5 The Tribunal had the following documents before it:-
 - (i) Form E application form dated 17 November 2024 and paper apart;
 - (ii) Title sheet DMF18836 confirming the Applicant's ownership of the property;
 - (iii) Excerpt from the online landlord register confirming the Applicant's landlord registration;
 - (iv) Short assured tenancy agreement between the parties and Form AT5;
 - (v) Notice to quit dated 26 January 2024 and certificate of service upon the Respondent by sheriff officers on 30 January 2024;
 - (vi) Form AT6 dated 30 September 2024 and certificate of service upon the Respondent by sheriff officers on 2 October 2024;
 - (vii) Section 11 notice to Dumfries and Galloway Council and proof of delivery by email;
 - (viii) Copy correspondence from the Applicant to the Respondent dated 24 July 2023 and 9 August 2023; and
 - (ix) Rent statements.
- 6 The Tribunal heard submissions from Mr Adams on the application. The following is a summary of the key elements of his submissions.
- 7 Mr Adams confirmed that the Applicant sought an eviction order. The Respondent resided in the property with her two adult children. The Respondent was in employment, and had advised the Applicant that both her children were also in work. There were no known health issues or vulnerabilities. Mr Adams confirmed that the arrears now stood at £4525.03. He gave a comprehensive account of the history of the rent arrears dating back to 1 March 2023 when the arrears stood at £1515.42. He detailed repeated attempts by the Applicant to engage with the Respondent to address the arrears. The Respondent had made numerous offers of payments that had been broken, and the rent account had been consistently in arrears for a number of years. The Respondent had recently been in touch with the local authority's homeless prevention unit, and had advised the Applicant that the local authority would make a payment of £1000 towards the arrears. However, the local authority had since told the Applicant that they had decided not to make the payment as the Respondent was in arrears

with her council tax. In light of the background to this case, Mr Adams submitted it was reasonable to make an eviction order. The arrears were now substantial and the Applicant had exhausted all efforts to support the Respondent in addressing matters.

- 8 The Tribunal adjourned the CMD to deliberate, at which point Mr Adams left the call, before resuming the CMD and confirming the outcome.

Findings in fact

- 9 The Applicant is the registered owner of the property. The Applicant is a registered landlord.
- 10 The Applicant and Respondent entered into a tenancy agreement in respect of the property, which commenced on 1 September 2017.
- 11 The tenancy between the parties was a short assured tenancy as defined by section 32 of the 1988 Act.
- 12 The Applicant has sent the Respondent a notice to quit. The notice was served upon the Respondent by sheriff officers on 30 January 2024 and terminated the contractual assured tenancy on 1 April 2024.
- 13 The Applicant has sent the Respondent a Form AT6 notice of their intention to raise proceedings for possession on grounds 11 and 12 of schedule 5 of the 1988 Act. The notice was served upon the Respondent by sheriff officers on 2 October 2024 and stated that proceedings for possession would not be raised any earlier than 22 October 2024.
- 14 The Applicant has sent Dumfries and Galloway Council a notice under section 11 of the Homelessness etc (Scotland) Act 2003. The notice was emailed to the local authority on 18 November 2024.
- 15 In terms of Clause 4.1 of the said tenancy agreement the Respondent agreed to pay rent at the rate of £509.16 per calendar month. The rent has been incrementally increased by the Applicant over the term of the tenancy. The current rent due to be paid by the Respondent to the Applicant is £537.02 per month.
- 16 The Respondent has failed to pay rent as agreed. As at the date of this decision, rent arrears in the sum of £4525.03 have accrued.
- 17 The rent account has been arrears since at least March 2023.
- 18 The arrears are not known to be due to any failure or delay in the payment of a relevant benefit.
- 19 The Applicant has written to the Respondent regarding the arrears. The Applicant has provided the Respondent with information regarding her rental obligations,

has offered to enter into payment plans, and has directed the Respondent to agencies for advice and support.

- 20 The Respondent has made numerous offers of payment, which she has broken.
- 21 The Respondent resides in the property with her two adult dependents. The Respondent and her dependents are all in employment.
- 22 The Respondent and her dependents have no known health issues or vulnerabilities.

Reasons for decision

- 23 The Tribunal was satisfied it had sufficient information before it to make relevant findings in fact and reach a decision on the application having regard to the application paperwork and the submissions heard at the CMD. In terms of Rule 17(4) and Rule 18(1) of the Rules the Tribunal determined that it could make a decision at the CMD as there were no issues to be resolved that would require a hearing and the Tribunal was satisfied that to make a decision would not be contrary to the interests of the parties. The Tribunal had given the Respondent the opportunity to make written representations, and to attend the CMD, but she had chosen not to do so.

- 24 The Tribunal considered the following provisions of section 18 of the 1988 Act as they apply to this case:-

“(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 this Act.

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

(6) The First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless—

(a) the ground for possession is Ground 2... in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9, Ground 10, Ground 15 or Ground 17; and

(b) the terms of the tenancy make provision for it to be brought to an end on the ground in question.”

- 25 Having considered the application paperwork, the Tribunal was satisfied that that the tenancy in place between the parties was a statutory assured tenancy, noting that the Applicant had sent the Respondent a notice to quit terminating the contractual tenancy on 1 April 2024. The Tribunal was also satisfied that the Applicant had sent the Respondent a Form AT6 notice of their intention to raise

proceedings for possession, which complied with section 19 of the 1988 Act. The Tribunal went on to consider whether grounds 11 and 12 had been met in this case.

26 Grounds 11 and 12 are in the following terms:-

“Ground 11

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

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.”

27 The Tribunal accepted based on the rent statements produced by the Applicant that the Respondent is in rent arrears of £4525.03 as at the date of this decision. The statements showed that the arrears date back several years and have therefore accrued over a prolonged period. The Tribunal was therefore satisfied that the provisions of grounds 11 and 12 had been met.

28 The Tribunal went on to consider whether it was reasonable to make an eviction order in this case.

29 The Tribunal gave significant weight to the extent of the Respondent's breach of her rental obligations and the level of rent arrears in this case. Payment of rent is a fundamental obligation of any tenancy. The Respondent had repeatedly failed to pay rent consistently in accordance with the terms of the tenancy agreement. There was no credible explanation as to why this was the case, particularly when it appeared that there were three adults in the household, all of whom were in employment. The Tribunal also took into account the repeated efforts by the Applicant to engage with the Respondent over a number of years, which were in line with the rent arrears pre-action protocol. It was clear that eviction was viewed by the Applicant as a last resort.

30 The Tribunal had no other information before it, other than the submissions from Mr Adams, in relation to the Respondent's circumstances. There did not appear to be any particular health issues or vulnerabilities affecting the Respondent and her family. There was no suggestion that the arrears were due to any failure or delay in the payment of benefits to which the Respondent may be entitled. Whilst the impact of eviction on the Respondent was a cause for concern, ultimately she had not produced anything to support an argument that eviction would be unreasonable on account of the facts in this case.

31 Accordingly, having considered the above factors as relevant to the issue of reasonableness, the Tribunal determined that the balance weighed in favour of making an eviction order.

32 The decision of the Tribunal was unanimous.

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.

Ruth O'Hare

Legal Member/Chair

13 June 2025

Date