



**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/19/0197**

**Re: Property at 17 Heriot Gate, Cross Street, Broughty Ferry, Dundee, DD5 2DY  
("the Property")**

**Parties:**

**Mrs Gerda Baruffati, Pitkerro House, Baldovie Toll, Dundee, DD5 3NX ("the  
Applicant")**

**Mr Billy Christie, 17 Heriot Gate, Cross Street, Broughty Ferry, Dundee, DD5  
2DY ("the Respondent")**

**Tribunal Members:**

**Neil Kinnear (Legal Member)**

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

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

**Background**

This is an application dated 17<sup>th</sup> January 2019 brought in terms of Rule 65 (Application for order for possession in relation to assured tenancies) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant provided with her application copies of the short assured tenancy agreement, form AT5, notice to quit, section 19 notice (form AT6), Section 11 notice, rent arrears statement and relevant execution of service.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The form AT6 intimated to the tenant that the landlord intended to raise proceedings for possession of the house on grounds 8, 11 and 12 of Schedule 5 to the *Housing (Scotland) Act 1988*.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 7<sup>th</sup> March 2019, and I was provided with the execution of service.

### **Case Management Discussion**

A Case Management Discussion was held on 28<sup>th</sup> March 2019 at Dundee Carers Centre, Seagate House, 132-134 Seagate, Dundee. The Applicant did not appear, but was represented by Miss Cooper, solicitor. The Respondent did not appear, nor was he represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

I was invited by Miss Cooper with reference to the application and papers to grant the order sought on grounds 8, 11 and 12 of Schedule 5 to the *Housing (Scotland) Act 1988*. The rent arrears statement provided indicates that as at the date of the form AT6 of 29<sup>th</sup> November 2018, the rent arrears totalled £1,800, being the unpaid rentals for the preceding three months.

Miss Cooper tendered a further rent arrears statement updated to today's date, which disclosed current arrears of rental of £2,800.00. The monthly rent for the property in terms of clause 6 of the short assured tenancy agreement is £600.00. The outstanding rent arrears amount to substantially in excess of 3 months' rent.

### **Statement of Reasons**

In terms of Section 18(3) of the *Housing (Scotland) Act 1988* ("the Act"), if the Tribunal is satisfied that any of the grounds in Part I of Schedule 5 to the Act is established then, subject to subsections (3A) and (6), the Tribunal shall make an order for possession.

Section 18(3A) of the Act provides that if the First-tier Tribunal is satisfied (a) that Ground 8 in Part I of Schedule 5 to this Act is established; and (b) that rent is in arrears as mentioned in that Ground as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

Section 18(6) of the Act provides that 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 or Ground 8 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.

The Tribunal is satisfied that ground 8 contained in Part 1 of Schedule 5 to the Act has been established. The Tribunal has not been satisfied that rent is in arrears as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit. There has been no evidence to establish any such reason for rent arrears. The terms of the short assured tenancy agreement make provision for it to be brought to an end on the ground in question.

In terms of Section 18(4) of the Act, if the Tribunal is satisfied that any of the grounds in 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.

Section 18(4A) of the Act provides that 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 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.

The Tribunal is satisfied that grounds 11 and 12 contained in Part 2 of Schedule 5 to the Act have been established, and considers that it is reasonable to make an order for possession. The Tribunal has not been satisfied that rent is in arrears as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit. There has been no evidence to establish any such reason for rent arrears.

For the above reasons, the Tribunal shall make an order for possession.

### **Decision**

In these circumstances, I will make an order for possession of the house let on the tenancy as sought in this application.

### **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.**

Neil Kinnear

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**Legal Member/Chair**

28/03/19

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**Date**