

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 of the Housing (Scotland)
Act 1988**

Chamber Ref: FTS/HPC/EV/18/0431

Re: Property at Flat 3, 58 Main Street, Dundee, DD2 5PZ (“the Property”)

Parties:

Mr Rob McLaren, 22 Highfield Place, Birkhill, Dundee, DD2 5PZ (“the Applicant”)

Mr Darryl James Kinnear, Flat 3L, 58 Main Street, Dundee, DD2 5PZ (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order is granted for possession of the property.

Background

- This decision should be read with FTS/HPC/CV/18/0432 as the cases were conjoined.
- The parties entered into a Short Assured Tenancy on 19th October 2017 until 19th April 2018 (both days inclusive). The lease was signed on 19th October 2017. An AT5 was signed by the Applicant and received by the Respondent on 19th October 2017. The rent payments of £400 were due by the 19th of each month.
- An AT6 and Notice to Quit were served on the Respondent by Sheriff Officer through letterbox delivery on 22nd December 2017. The AT6 raised grounds 11 and 12 stating that the arrears were £1200.
- An Application was sent to the Housing and Property Chamber on 13th February 2018.
- A Case Management Decision (“CMD”) was held on 15th May 2018. Both the Applicant and the Respondent were present. The Applicant was also

represented by Ms Miller, Solicitor, Thorntons WS. The Respondent requested further time to allow him to instruct Bruce Short Solicitors. He noted that he did not wish to put forward a defence until he had instructed his solicitor. He did confirm that he had been suspended from his employment with the NHS and has not worked for 5 months. He informed the Tribunal that he had submitted a claim for Universal Credit which included a claim for Housing Benefit advising that the first payment would be on 12th June 2018. Once he had received this he would be able to calculate how much of the arrears would be left from his Housing Benefit backdate and make a payment proposal to the Applicant. The Applicant confirmed to the Tribunal that there had been only 1 payment since the start of the tenancy. The Respondent informed the Tribunal that he would get his solicitor to contact the Housing and Property Chamber directly. As the Respondent was present the Applicant motioned for the amount of £2400. The Tribunal granted this and continued the CMD to allow for the Respondent to get legal representation. It was agreed the next CMD would be on 20th June and would be held by telephone conference.

- The Housing and Property Chamber wrote to both parties issuing the decision of the CMD. This was served on the Respondent by Sheriff Officers through letterbox service on 23rd May 2018.
- An email was received from the Applicant's solicitor on 13th June 2018 with confirmation from Bruce Short Solicitors that they were not representing the Respondent.
- The Continued CMD took place by telephone conference on 20th June 2018 at 10am. The Respondent did not dial in. He was called at 10.10am. He confirmed that he was at work and did not finish until 7pm stating that he had not received confirmation of the CMD and asked for a further continuation. The Applicant was present with his solicitor, Ms Miller, Thorntons. The Applicant opposed the CMD being continued further as the Respondent had contacted him the night before offering payment of his rent plus £250 per month towards the arrears. The CMD was briefly adjourned and resumed being recorded. Neither party objected to the recording. The Applicant motioned for an increase of the arrears to £3200. The Tribunal decided to fix a Hearing, issue Directions and issue a Notice to the Respondent with regard to the increase of the amount sought under rule 70. The rule 70 matter was continued to the Hearing to determine what benefits issues there were.
- The Direction was sent by the Housing and Property Chamber on 22nd June 2018 by recorded delivery. It was not collected so was sent again by normal post. It included details of the Hearing date of 7th August 2018. The Direction ordered that the Respondent provide any documents showing the steps taken for him to obtain benefits since October 2017 and any documents showing his suspension from work. This letter asked for a response within 5 days of receipt of it. The Housing and Property Chamber did not receive a response to it.

The Hearing

- The Hearing was held on 7th August 2018 at 2pm.

- The Respondent did not attend. The Tribunal delayed the start of the Hearing until 2.10pm to allow for any lateness. The Respondent was not present at 2.10pm. The Tribunal continued in his absence satisfied that he had received sufficient notice of the hearing.
- The Applicant attended with his solicitor, Ms Miller from Thorntons. The Applicant confirmed to the Tribunal that he had contacted the Respondent approximately 1 month ago by telephone. The Respondent had indicated that he was in employment and would be next paid on 20th July 2018. The Applicant was then on holiday from 21st July – 28th July 2018. He sent a text message on his return to the Respondent asking if he had obtained a new tenancy and if he was still in the Property. He had no response and sent the same message again. The Applicant does not believe that the Respondent has left the Property. He went to the Property on 6th August 2018 and knocked on the door. He had no response so looked through the letterbox. He was able to see that the Property looked inhabited and that there was an opened letter on the radiator. The Applicant has not received any further payments from the Respondent. He has not been contacted by Housing Benefit and has received no further information that there will be a payment of Housing Benefit. He confirmed that the only payment he received was for the first month when he took it in advance from the Respondent at the signing of the lease.
- Ms A Miller asked the Tribunal to increase the amount sought to £3200 as per the previous CMD. She confirmed that the Notice regarding the increase had been sent out to her at the time the Decision and Direction were sent. She then sent a copy of this plus the lease, as requested by the Respondent, by Recorded Delivery. This was not collected so the Applicant hand delivered a copy to the Respondent. This was left in the Respondent's letterbox.

Findings in Fact

- The parties entered into a Short Assured Tenancy on 19th October 2017 until 19th April 2018 (both days inclusive). The lease was signed on 19th October 2017. An AT5 was signed by the Applicant and received by the Respondent on 19th October 2017. The rent payments of £400 were due by the 19th of each month.
- An AT6 and Notice to Quit were served on the Respondent by Sheriff Officer through letterbox delivery on 22nd December 2017. The AT6 raised grounds 11 and 12 stating that the arrears were £1200.
- An Application was sent to the Housing and Property Chamber on 13th February 2018.
- The Respondent has not paid any rent payments to the Applicant except for the first payment of £400 when he signed his lease in October 2017.
- There has been no payment of Housing Benefit to the Applicant or evidence of forth coming payments.
- The Respondent did not respond to either the Direction or the Notice issued by the Housing and Property Chamber.

Reasons for Decision

- The Tribunal were satisfied that the lease had been appropriately constituted and the appropriate documents had been served upon the Respondent. As a result the Tribunal were satisfied that a decision could be made on the matters before them. The Respondent has persistently not paid his rent payments except for the first payment made when he signed the lease. The arrears are in excess of £3200. He has made no significant offers to repay the arrears. The Tribunal were satisfied that he was aware of the date of the Hearing and the amount sought by the Applicant. There was no evidence to support the Respondent's contention that he had applied for Universal Credit (with the Housing Benefit element) and that a payment had been made on 12th June 2018. The Applicant had neither received information nor money to this respect. No evidence was brought before the Tribunal to support that he had been suspended from this employment for several months. The Applicant had submitted text messages between himself and the Respondent in which the Respondent had narrated that he was in employment until at least early February 2018. The Respondent has one child who resides with him two days per week but is domiciled with the child's mother for the majority of the time. The Tribunal was satisfied that there were no other issues of reasonableness before them. The Tribunal decided that it was reasonable to grant the Order.

Decision

- The Applicant is entitled to the Order for the possession of the Property. The Order was granted.

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.

G. MILLER

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Legal Member/Chair

Date

7 Aug 18