

**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 (Act)**

**Chamber Ref: FTS/HPC/EV/18/0446**

**Re: Property at 212 Main Street, Motherwell, ML1 4TP ("the Property")**

**Parties:**

**Mr Thomas Collins, 19 Wilkie Drive, Motherwell, ML1 4YU ("the Applicant")**

**Mrs Leighann Blair, 212 Main Street, Motherwell, ML1 4TP ("the Respondent")**

**Tribunal Members:**

**Alan Strain (Legal Member) and Leslie Forrest (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the order for eviction and recovery of possession be granted.**

**Background**

This is an Application for recovery of possession under section 18(1) of the Act and Rule 65 of the Tribunal Procedure Rules. The Ground for possession is stated to be Ground 8 of Schedule 5 to the Act.

**Hearing**

The case called for Hearing on 21 September 2018. The Applicant was represented by Mr Colin Johnstone who was present along with his mother Mrs Johnstone. The Respondent did not appear but was represented by her Solicitor, Mr Knox of Lanarkshire Law Centre.

The Tribunal had before it the following documents:

- (i) Application received 20 February 2018;

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- (ii) Tenancy Agreement dated 27 April 2016;
- (iii) AT6 dated 22 November 2017;
- (iv) Statements of Rent Arrears as at 27 December 2017, 28 June 2018 and date of Hearing;
- (v) AT6 served 12 June 2018;
- (vi) Certificate of Service dated 12 June 2018;
- (vii) Notice to Quit 30 September 2017;
- (viii) Skeletal Argument for Respondent.

### **Preliminary Issue**

Mr Knox raised a preliminary issue as to whether or not the Applicant had given appropriate notice in terms of section 19 of the Act. His submission was that that no evidence of service was produced in respect of the AT6 dated 22 November 2017. The Respondent denied having received the AT6. The subsequent AT6 was served by Sheriff Officers on 12 June 2018 after proceedings had been raised on 20 February 2018. In his submission Mr Knox proposed that the Tribunal should not entertain the proceedings given that the AT6 was served after the commencement of proceedings.

The Tribunal heard evidence from both Mr and Mrs Johnstone to the effect that the AT6 had been personally served by Mr Johnstone at a meeting with the Respondent at the Property on 22 November 2017. Mrs Johnstone gave evidence that the Respondent had gone to the council in November 2017 with the AT6 to try and get rehoused on the basis that she was being evicted from the Property.

The Tribunal afforded Mr Knox the opportunity to cross examine the Applicant's witnesses.

The Tribunal then adjourned to consider the preliminary issue and determined that (i) the AT6 dated 22 November 2017 had been validly served on the Respondent and contained the appropriate information and notice; (ii) Even were the Tribunal not to have found that the AT6 dated 22 November 2017 had been validly served then it would have found that the subsequent AT6 served on 12 June 2018 was valid and did not prevent the Tribunal considering the application simply because it was served after proceedings had been commenced.

### **Substantive Hearing**

The Hearing then recommenced. The Tribunal asked Mr Knox his position with regard to the Notice to Quit. Mr Knox confirmed that he was no longer insisting on that position and that the Tenancy could be terminated on service of an AT6.

The Tribunal asked Mr Knox to address the issue he had raised in his skeletal arguments regarding Section 18 (3)(A) and 18(8) of the Act to the effect that the Tribunal should not grant the order sought unless it was reasonable to do so given that the Council had failed or delayed to pay Housing Benefit.

When the Tribunal enquired as to the evidential basis for this submission Mr Knox stated that this was due to changes in the Respondent's personal and financial

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circumstances and that she had not been eligible for payment of Housing Benefit in respect of the full amount of the rent. Mr Knox accepted that the Respondent's personal circumstances did not evidence any delay or failure on the part of the Council to pay Housing Benefit. He also accepted that he could not give any evidence of failure or delay on the part of the council to do so.

The Tribunal then considered the question as to whether or not Ground 8 had been made out. Mr Knox conceded that as at the date of commencement of proceedings there were in excess of 3 months' rent arrears and as at the date of the Hearing there were in excess of 3 months' rent arrears. The Tribunal then went on to enquire as to the precise amounts of the rent arrears.

The Applicant produced an up to date schedule of rent arrears. After consideration by the Tribunal and some clarification it was established that there were in excess of 3 months' rent arrears at the date of commencement of proceedings and as at the Hearing. As at 20 February 2018 the arrears totalled £2,500 and as at the date of the Hearing £2,393.98.

The Tribunal then asked for submissions from the parties. Mr Knox made a submission in terms of section 20 of the Act to the effect that the Tribunal should sist or postpone enforcement of any order in light of the Respondent's personal circumstances and to enable discussions to take place with the Applicant. The Respondent is a single parent of 5 children and is pregnant with a sixth.

The Applicant opposed the application in terms of section 20 given the passage of time, the impact it was having on the Applicant's health and the rent arrears.

The Tribunal then adjourned to consider the matter.

### **Decision and Reasons**

So far as material the Tribunal made the following findings in fact:

1. The parties had entered in to a Tenancy Agreement dated 27 April 2016 in terms of which the Respondent undertook to pay monthly rent of £550;
2. The Respondent fell into arrears and as at 20 February 2018 the arrears were £2,500 (in excess of 3 months rent);
3. The Applicant served form AT6 dated 22 November 2017 personally upon the Respondent on 22 November 2017 at the Property;
4. The Applicant served a further AT6 by Sheriff Officer on the Respondent dated 12 June 2018;
5. Both AT6 gave in excess of 14 days notice and specified that recovery of possession was sought in terms of Ground 8;
6. There was no evidence of failure or delay on the part of the Council to pay Housing Benefit.

The Tribunal found that Ground 8 was made out. As there was no failure or delay on the part of the Council to pay Housing Benefit the Tribunal had no discretion and the Order was granted.

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The Tribunal considered the application in terms of section 20, the submissions, the overriding objective and the interests of justice. The Tribunal were satisfied that the application should be refused. The Respondent has had ample time and opportunity to resolve matters. Whilst the Tribunal were appreciative of the Respondent's personal circumstances those had to be weighed with the interests of the Applicant and the overriding objective. The Tribunal refused the 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.

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Legal Member/Chair

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Date

21 September 2018.