



**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/19/0820

**Re: Property at Flat 135/3, Craigmillar Castle Avenue, Edinburgh, EH16 4DN
("the Property")**

Parties

**Mr Murdo Guy, 6 Halsford Park Road, East Grinstead, RH19 1PN ("the
Applicant")**

**Ms Rebeka Owczarek, Flat 135/3, Craigmillar Castle Avenue, Edinburgh, EH16
4DN ("the Respondent")**

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland has decided to grant an order against the Respondent for possession of the Property under section 18 of the Housing (Scotland) Act 1988. **The order will be issued to the Applicant after expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents.**

The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 8 March 2019, the Applicant's solicitor applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the

Tribunal”) for an order for recovery of possession of the property at Flat 135/3, Craigmillar Castle Avenue, Edinburgh, EH16 4DN (“the Property”) under Section 18 of the Housing (Scotland) Act 1988.

2. On 20 March 2019, the Tribunal accepted the application under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
3. On 13 April 2019, the Tribunal enclosed a copy of the application to both parties and invited the Respondent to make written representations to the application by 1 May 2019. The Tribunal also advised both parties that a Case Management Discussion under Rule 17 of the Regulations would proceed on 9 May 2019.
4. The Respondent did not make any written representations by 1 May 2019.

Case Management Discussion

5. The Tribunal proceeded with the Case Management Discussion on 9 May 2019. The Applicant was represented by Miss Caldwell from TC Young, solicitors. The Respondent appeared personally. The Respondent explained that she had consulted Community Help and Advice Initiative (“CHAI”) a local charity which offers advice and support for tenants, but CHAI were unable to attend on her behalf at the Case Management Discussion. The Respondent confirmed that she understood the purpose of the Case Management Discussion and felt able to fully participate in the proceedings.
6. The Tribunal had before it three separate Assured Tenancy Agreements between the Applicant and the Respondent which commenced on 31 March 2010, 31 March 2011 and 1 July 2012. It also had a Notice to Quit dated 21 January 2015 bringing the contractual tenancy to an end on 1 July 2015 with Sheriff Officer’s Execution of Service dated 23 January 2015, AT6 Notice under Section 19 of the Housing (Scotland) Act 1988 dated 8 January 2019 with Sheriff Officer’s Execution of Service dated 10 January 2019, a rent statement to 5 March 2019 and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Edinburgh City Council dated 8 March 2019.
7. The Case Management Discussion immediately followed on from the Case Management Discussion brought under FTS/HPC/CV/19/0821 concerning the arrears which had risen under the Assured Tenancy Agreement. Miss Caldwell explained to the Tribunal that in terms of the Assured Tenancy

Agreement dated 4 July 2012, the Respondent agreed to pay monthly rent of £550 to the Applicant. At the point of lodging the application with the Tribunal the arrears were £15 506.29. She explained the arrears had increased to £16 606.29 and produced a rent statement showing how the arrears had so accrued. A copy of the updated rent statement was passed to the Respondent. Miss Caldwell moved the Tribunal to grant an order for eviction under Section 18 of the Housing (Scotland) Act 1988.

8. Miss Caldwell referred the Tribunal to the Notice to Quit dated 21 January 2015 and served by way of Sheriff Officers on 23 January 2015. She submitted the Notice to Quit reduced the contractual Assured Tenancy to a statutory Assured Tenancy on 1 July 2015. The terms of the Assured Tenancy did not have any grounds of repossession written into them to allow it to be brought to an end whilst it was a contractual tenancy. However, after the Assured Tenancy was reduced to a statutory Assured Tenancy at the expiry of the Notice to Quit on 1 July 2015, Section 18(6) of the Housing (Scotland) Act 1988 allowed the Applicant to rely on Grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988.
9. She went onto submit that the Applicant served a Notice of Intention to Raise Proceedings for Possession on the Respondent on 8 January 2019 (AT6 Notice) under Section 19 and founding on Grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988.
10. Miss Caldwell submitted that the arrears were so significant and exceeded three months. At the date of service of the AT6 the arrears were £14406.29. As at the date of the Case Management Discussion, arrears were £16606.29. She submitted therefore that the Applicant had established a case under Ground 8 of Schedule 5 of the Housing (Scotland) Act 1988. Whilst she had no specific instructions on reasonableness she submitted that the rent statement showed that throughout the tenancy there had been significant delays in paying rent, with the Respondent being in and out of arrears, with numerous periods of non-payment with the last payment being on 22 February 2018. Her main submission was that Ground 8, being a mandatory ground of repossession had been satisfied and the Tribunal had to grant the order.
11. The requisite Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 had been served by way of email to Edinburgh City Council on 8 March 2019. Miss Caldwell moved for an order for eviction.

12. The Tribunal explained the significance of the mandatory ground of repossession to the Respondent. The Respondent explained that after she took advice from CHAI she understood that the Tribunal had no discretion but to grant the order for eviction if satisfied that she had been more than three months in arrears both at the date of service of the AT6 Notice and at the date of the Case Management Discussion. She had explained during the Case Management Discussion in the preceding arrears case that CHAI were going to help her apply for Housing Benefit and were hopeful that she would be entitled to a backdate in Housing Benefit of 6 months. Going forward therefore, she expected to be in a position to pay the rent in full. However, the Tribunal pointed out that the level of arrears would not be cleared to any significant extent by a 6 months' backdate of Housing Benefit. She explained she had had issues with Employment and Support Allowance and that she no money to pay the arrears.

Findings In Fact

13. The Applicant and the Respondent agreed by way of an Assured Tenancy Agreement dated 4 July 2012 in relation to the Property that the Respondent would pay the Applicant a calendar monthly rent of £550 due on 5th of each month. The agreement had no provision for it to be brought to an end on any of the Grounds of repossession in Schedule 5 of the Housing (Scotland) Act 1988.
14. The Respondent has fallen into arrears of rent. The last payment to account was on 22 February 2018. The Respondent has made no payments of rent since. Current arrears are £16606.29. The arrears were not as a consequence of a delay or failure of Housing Benefit or Universal Credit.
15. On 23 January 2015 a Notice to Quit dated 21 January 2015 had been served on the Respondent by way of Sheriff Officers reducing the contractual Assured Tenancy to a statutory Assured Tenancy on 1 July 2015.
16. On 10 January 2019, an AT6 Notice dated 8 January 2019 had been served on the Respondent by way of Sheriff Officers in terms of Section 19 and founding on Grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988.
17. Both at the date of service of the AT6 and at the date of the Case Management Discussion, the Respondent was more than three months in arrears of rent. Arrears of rent were £14406.29 as of 8 January 2019. The current arrears were £16 606.29.

18. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was served on Edinburgh City Council by way email on 8 March 2019.

Reasons For Decision

19. In terms of Section 18(3), subject to Section 18(6) of the Housing (Scotland) Act 1988, the Tribunal shall make an order for possession if satisfied that any of the Grounds of Possession as set out in Part I of Schedule 5 are established. In terms of Section 18(3A) if the Tribunal is satisfied that Ground 8 is established and that the arrears are as a consequence of a delay or failure in the payment of relevant housing benefit, it shall not make an order unless it considers it reasonable to do so.
20. In terms of Section 18(6) of the Housing (Scotland) Act 1988, the Tribunal shall not make an order for repossession of an assured tenancy, not being a statutory assured tenancy, unless amongst other grounds, the ground of possession is Ground 8 and the terms of the tenancy allow for it to be brought to an end on the ground in question.
21. Ground 8 in Part I of Schedule 5 states *"Both at the date of the service of the notice under section 19 of this Act relating to the proceedings for possession and at the date of the hearing, at least three months rent lawfully due from the tenant is in arrears"*
22. The Tribunal considered the issues set out in the application. The Applicant provided evidence of non-payment of rent in the form of the rent statement and provided evidence that the Respondent had agreed to pay rent of £550 per month. The Tribunal was satisfied on the basis of the documents before it and the supporting oral submissions made on behalf of the Applicant that the contractual tenancy had been reduced to a statutory tenancy on 1 July 2015 by service of the Notice to Quit on 23 January 2015. Thereafter the Applicant in terms of Section 18(6) of the Housing (Scotland) Act 1988 was entitled to rely on any of the grounds of repossession in Schedule 5 of the 1988 Act.
23. The Tribunal was satisfied the Respondent was at the date of the AT6 being served and at the date of the Case Management Discussion more than three month arrears of rent. The Tribunal was satisfied on the basis of the tenancy agreement, rent statement and the supporting oral submissions made on behalf of the Applicant and by Ms Owczarek herself that the arrears were not as a consequence of a delay or failure in Housing Benefit.
24. The Tribunal concluded that the Applicant had established a case under Ground 8 of Schedule 5 of the Housing (Scotland) Act 1988 and was entitled

to repossession of the Property under Section 18 of the Housing (Scotland) Act 1988. Accordingly, the Tribunal granted the order sought.

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.

**Shirley Evans
Legal Member**

10 May 2019