



**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 (“the 1988 Act”) and Rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)**

**Chamber Ref: FTS/HPC/EV/19/1081**

**Re: Property at 64 Cairnswell Avenue, Cambuslang, G72 8SP  
 (“the Property”)**

**Parties:**

**Mr John Crisp, c/o Holborn Property Management, Suite 46, Geddes House,  
Kirkton North, Livingston, EH54 6GU  
 (“the Applicant”)**

**Clarity Simplicity Limited, 34 Woodlands Road, Glasgow, G3 6UR  
 (“the Applicant’s Representative”)**

**Ms Louise McCafferty, 64 Cairnswell Avenue, Cambuslang, G72 8SP  
 (“the Respondent”)**

**Tribunal Member:**

**Susanne L. M. Tanner Q.C. (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) was satisfied that Ground 8 in Part I of Schedule 5 to the 1988 Act was established by the Applicant, in that both at the date of service of the notice under Section 19 of the 1988 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; that rent arrears were not a consequence of a delay or failure in payment of relevant housing benefit or universal credit; and made an order for possession in terms of Section 18(3) of the 1988 Act.**

## Reasons

### 1. Procedural Background

1.1. The Applicant's Representative made an application to the tribunal on 8 April 2019 in terms of Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act") and Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").

1.2. The Applicant's Representative lodged with the Application:

1.2.1. a statement of claim;

1.2.2. a copy of a Short Assured Tenancy agreement dated 12 December 2013;

1.2.3. A copy of an AT5 form dated 5 December 2013;

1.2.4. a copy of a Notice to Quit dated 8 February 2019;

1.2.5. A copy of an AT6 notice dated 8 February 2019;

1.2.6. Proof of service of the Notice to Quit and AT6 notice on 8 February 2019;

1.2.7. Rent statements dated 14 and 15 March 2019;

1.2.8. Section 11 notice sent to the local authority;

1.2.9. Excerpt from Scottish Landlord Register for the Property.

1.3. A revised Statement of Claim was submitted on 16 April 2019. The Applicant seeks the Respondent's eviction from the Property in terms of Section 18 of the 1988 Act under Grounds 8, 11 and 12 of Schedule 5 to the 1988 Act.

1.4. The Application was accepted for determination by a tribunal on 30 April 2019. Both parties were notified by letters dated 10 May 2019 of the date, time and place of Case Management Discussion ("CMD") in relation to the Application on 13 June 2019. The Respondent was invited to make written representations in response to the Application by 28 May 2019. Both parties were advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this will not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do

so and the procedure has been fair. The Application paperwork and notification was served on the Respondent by Sheriff Officers on 13 May 2019.

- 1.5. The tribunal issued Directions dated 1 June 2019, requiring the Applicant or Applicant's Representative to comply with the orders no later than close of business on 11 June 2019.
- 1.6. On 7 June 2019, in response to the Directions, the Applicant's Representative submitted proof of rent increases in the period 15 June 2014 to date and an updated rent statement to 6 June 2019.
- 1.7. The Respondent did not submit any written representations in response to the Application or any response to the tribunal's Directions.

## **2. CMD: 13 June 2019 at 1000h, Glasgow Tribunals Centre, 20 York Street, Glasgow**

- 2.1. Eilidh Crawford from the Applicant's Representative attended the CMD on behalf of the Applicant.
- 2.2. The Respondent did not attend the Case Management Discussion, nor did she make contact with the tribunal or its administration to advise that he could not attend. The tribunal was satisfied that the requirements of Rule 24(1) of the 2017 Rules regarding the giving of notice of a hearing had been duly complied with and proceeded with the Application upon the representations of the Applicant's Representative and all the material before it, in terms of Rule 27(1) of the 2017 Rules.
- 2.3. The tribunal chair explained the purpose of the CMD in terms of Rule 17 of the 2017 Rules and stated that as parties had already been notified, the tribunal could do anything at a CMD which it may do at a hearing, including issuing a decision. The tribunal chair also stated to Ms Crawford that as the case was being heard in the absence of the Respondent, it would be open to the Respondent to apply to the tribunal for recall of any decision made in her absence and any such application would require the Respondent to state why it would be in the interests of justice to do so.
- 2.4. Ms Crawford invited the tribunal to grant an order for possession on the basis of the information before it, in that the requirements of Ground 8 of Part 1 of Schedule 5 were met. The Shorthold Assured Tenancy is dated 12 December 2013. The Notice to Quit and AT6 Form were served by Sheriff officers on 8 February 2019. The rent arrears currently stand £4297.83. The rent was increased in January 2018 to £600 pcm. However, Ms Crawford stated that it could be

argued that there has been no acceptance of this amount because there has been no payment to this value following the letter of 11 October 2017 notifying of the new monthly payment from January 2018 of £600pcm. No rent has been paid since then. Housing Benefit was received on 24 May 2019 due to the letting agent getting in touch with the benefits offices and arranging for payment. The updated rent statement to 6 June 2019 shows Housing Benefit of £551.50 on 24 May 2019.

- 2.5. Ms Crawford advised the tribunal that there was a civil application to the tribunal in which an order for payment was made on 5 April 2019. The Respondent was present at the Case Management Discussion. The Applicant in the civil action accepted that perhaps there had been no acceptance by the Respondent of the increase to £600 pcm and the order for payment was made on the basis that the increase to £600 from 1 January 2018 had not been accepted. An order for payment of £3107.00 was made for arrears from the start of the tenancy until 15 April 2019. There has been no contact from the Respondent to the Applicant or Applicant's Representative since her appearance at the CMD in the civil case. The reason that the cases are not conjoined is that an earlier eviction application was made with the civil application and then withdrawn in order that fresh paperwork could be served and this application for possession is a fresh application.
  - 2.6. Ms Crawford submitted that on the basis that the rent remains at £570.00 per calendar month, there is greater than 3 months' rent arrears as at today's date. The amount outstanding is £4297.83. The amount of rent arrears at the date the AT6 notice was served on 8 February 2019 was £3032.61.
  - 2.7. Ms Crawford has no information to suggest that the rent is in arrears due to a delay or failure in the payment of relevant Housing Benefit.
3. The tribunal makes the following findings-in-fact:
    - 3.1. There is a tenancy between the Applicant and the Respondent for the initial period 15 December 2013 to 14 June 2014 and thereafter the tenancy has continued by tacit relocation on six monthly basis.
    - 3.2. Rent is payable by the Respondent to the Applicants in the sum of £525 per calendar month, monthly in advance, starting on 15 December 2013; £545 per calendar month from 1 January 2016; £570 per calendar month from 1 January 2017 and £600 per calendar month from 1 January 2018.
    - 3.3. The AT6 (Section 19 notice) was served on the Respondent on 8 February 2019.
    - 3.4. As at 8 February 2019 there were rent arrears of £3032.61.

- 3.5. As at the date of service of the AT6 notice on 8 February 2019 at least three months' rent lawfully due from the tenant was in arrears.
- 3.6. The AT6 notice included notice that the Applicants were intending to raise proceedings for possession of the Property on Grounds 8, 11 and 12 of Schedule 5 to the Housing (Scotland) Act 1988 ("the 1988 Act").
- 3.7. As at the date of the CMD on 13 June 2019 the rent arrears were £4297.83
- 3.8. As at the date of the CMD hearing, at least three months' rent lawfully due from the Respondent was in arrears.
- 3.9. The rent arrears are not a consequence of a delay or failure in the payment of Housing Benefit or relevant universal credit.

### **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.**

**6 June 2019**

**Susanne L. M. Tanner Q.C.  
Legal Member/Chair**