

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, as amended (“1988 Act”)

Chamber Ref: FTS/HPC/EV/18/1511

Re: 9B Murray Street, Perth, PH1 5PJ (“the Property”)

Parties:

**Hillcrest Enterprises Limited, 1 Explorer Road, Dundee, DD2 1EG
 (“the Applicant”)**

**Mr Aaron Jorgensen, Ythan Ward, Rohallion Secure Care Clinic, Murray Royal Hospital, Muirhall Road, Perth, PH2 7BH
 (“the Respondent”)**

Tribunal Members:

Pamela Woodman (Legal Member) and Leslie Forrest (Ordinary Member)

Present:

The hearing in relation to case reference FTS/HPC/EV/18/1511 took place at 2pm on Monday 7 January 2019 in The Inveralmond Business Centre, Auld Bond Road, Perth, PH1 3FX (“**the Hearing**”). Neither the Applicant nor the Respondent was present at the Hearing. However, the Applicant was represented by Hayley Swanson (“**Applicant’s Representative**”) of TC Young, Solicitors and the Respondent was represented by John McLaughlin (“**Respondent’s Representative**”) of Culley & McAlpine, Solicitors.

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:

BACKGROUND

1. An application was made to the Tribunal under section 18 of the 1988 Act. The application was made in terms of the First-tier Tribunal for Scotland Housing and

Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended, (“**2017 Regulations**”). More specifically, the application was made in terms of rule 65 (*Application for order for possession in relation to assured tenancies*) of the HPC Rules.

2. The order sought from the Tribunal was an order for possession of the Property under ground 8, 11 and/or 12 (as set out in schedule 5 to the 1988 Act).
3. A notice of acceptance of the application was issued by the Tribunal dated 17 July 2018 under rule 9 of the HPC Rules (“**Notice of Acceptance**”), which confirmed that the application paperwork had been received by the Tribunal between 20 June 2018 and 3 July 2018.
4. A hearing had been scheduled for an earlier date but had required to be postponed.
5. This decision arises out of the Hearing.

PROCEEDINGS

6. The Respondent’s Representative explained that the Respondent had been in and out of hospital since 2002 and was currently in hospital. The Respondent’s Representative had met with the Respondent in hospital on the morning of the Hearing.
7. The Respondent’s Representative:
 - a. Confirmed that the Respondent had previously been in receipt of housing benefit but was not currently in receipt of housing benefit or universal credit. He confirmed that this position was unlikely to change in the near future;
 - b. Noted that the Respondent was hopeful of being released from hospital within the next few months;
 - c. Confirmed that ground 8 (as set out in schedule 5 to the 1988 Act) had been made out and that he did not object to an order for possession being made on that ground. He noted that this had been explained to the Respondent and was understood and accepted by him;
 - d. Submitted that it was not the Respondent’s fault that he had been unable to pay rent and so grounds 11 and 12 should not be considered;
 - e. Confirmed that the Respondent still had belongings in the Property and that the Respondent would speak to his mother about clearing those out; and
 - f. Confirmed that the details set out in the rent statement provided (covering the period from 17 January 2013 to 9 November 2018) (“**Rent Statement**”) were accepted and that, as at 9 November 2018, the rent arrears were £4,728.39.

8. The Applicant's Representative noted that the Applicant had given the Respondent the opportunity to terminate the tenancy in or around May 2018 but that he had not wished to do so.

REASONS FOR DECISION

9. Ground 8 (as set out in schedule 5 to the 1988 Act) is in the following terms:

"Both at the date of 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."

10. The Respondent's Representative had confirmed that ground 8 had been made out and, based on this confirmation and the details set out in the Rent Statement, the Tribunal was satisfied that ground 8 had been established.
11. The Tribunal was also satisfied, primarily based on the information provided by the Respondent's Representative, that section 18(3A) of the 1988 Act was not applicable in the particular circumstances of this case.
12. Accordingly, the Tribunal was required to make an order for possession in terms of section 18(3) of the 1988 Act.

DECISION

13. The Tribunal decided that an order be granted against the Respondent for possession of the Property under section 18 of the 1988 Act, which order was not to be executed prior to 12 noon on Friday 8 February 2019.
14. The order referred to in the preceding paragraph was intimated orally to the Applicant's Representative and the Respondent's Representative by the Chair during the Hearing.

Right of Appeal

In terms of Section 46 of the Tribunals (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.

P Woodman

Legal Member/Chair

7 January 2019

Date