



**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/19/1527

**Re: Property at Flat 5, 2F/R, 100 Victoria Road, Aberdeen, AB11 9DU (“the
Property”)**

Parties:

Mrs Mrinmoyee Nath, 9 Eday Drive, Aberdeen, AB15 7LF (“the Applicant”)

**Mr George Abidogun, Flat 5, 2F/R, 100 Victoria Road, Aberdeen, AB11 9DU
 (“the Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined to make an order for repossession against the
Respondent.**

- 1 By application dated 17th May 2019 the Applicant sought an order for repossession of the property against the Respondent. The Applicant submitted the following documentation in support of the application:-
 - (i) Copy Tenancy Agreement between the Applicant and Respondent dated 31st March 2017 and Form AT5;
 - (ii) Form AT6 dated 10th April 2019 citing grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988;
 - (iii) Notice to Quit dated 10th April 2019;
 - (iv) Section 33(1)(d) Notice dated 10th April 2019
 - (v) Copy Certificate of Service from Sheriff Officers dated 12th April 2019
 - (vi) Rent Account from 1st April 2017 to 1st May 2019
 - (vii) Section 11 Notice to Aberdeen City Council

- 2 By Notice of Acceptance of Application dated 4 July 2019 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 16th August 2019.
- 3 A copy of the application paperwork together with notification of the Case Management Discussion was served on the Respondent by Sheriff Officers on 17th July 2019.

The Case Management Discussion

- 4 The Case Management Discussion took place on 16th August 2019. The Applicant's Representative was present. The Applicant's mother, Bhakti Majumder was also present.
- 5 The Applicant's Representative advised that the arrears as at the date of Case Management Discussion were £3,500. He confirmed that the Respondent had stated explicitly in January 2019 that he would not be paying any rent. There were no housing benefit issues he was aware of that were preventing the payment of rent. He produced an up to date rent account for consideration by the Tribunal.

Findings in Fact and Law

- 6 The parties entered into a Short Assured Tenancy Agreement in respect of the property dated 31st March 2017.
- 7 The Short Assured Tenancy Agreement contains the grounds for repossession as set out in Schedule 5 of the Housing (Scotland) Act 1988 ("the 1988 Act")
- 8 In terms of Clause 3 of the said Tenancy Agreement the Respondent is due to pay rent of £500 per month.
- 9 On 10th April 2019 the Respondent was served with a Form AT6 citing grounds 8, 11 and 12 of Schedule 5 of the 1988 Act by Sheriff Officers.
- 10 As at the date of service of the Form AT6, arrears in the sum of £1500 were outstanding.
- 11 As at the date of the Case Management Discussion, arrears in the sum of £3500 are outstanding.

- 12 The arrears are not the result of any failure of payment of housing benefit or its equivalent.

Reasons for Decision

- 13 The Tribunal was satisfied that it was able to continue with the Case Management Discussion in the absence of the Respondent. He had received service of the application by Sheriff Officers and the report confirmed that he had been in touch with them in response to a contact card. The Tribunal therefore accepted that he was aware of the Case Management Discussion and had been given the opportunity to attend.
- 14 The Tribunal was further satisfied that it was able to make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties.
- 15 In this case the Applicant sought repossession on grounds 8, 11 and 12 of the Housing (Scotland) Act 1988 ("the 1988 Act"). The Respondent had been properly served with a Form AT6 giving notice of the Applicant's intention to raise proceedings on those grounds. Whilst the AT6 did not specify the outstanding rent arrears figure, the Tribunal accepted the Applicant's submission that there had been ongoing conversations with the Respondent at that time regarding the arrears, he was aware of the position with his rent account and he had stated an intention to not pay any rent from January 2019 onwards.
- 16 The Tribunal further accepted that the grounds relied upon were set out in the Tenancy Agreement and there was no requirement therefore in terms of section 18(6) of the 1988 Act for the Applicant to terminate the contractual tenancy between the parties prior to raising proceedings. The Tribunal did not therefore have to make a determination on the validity of the Notice to Quit.
- 17 The Tribunal therefore considered whether the grounds relied upon had been met. Ground 8 is a mandatory ground. It states that the Tribunal must make an order for repossession where there is at least three months rent outstanding both at the date of service of the AT6 and at the date of determination of the application, unless there is evidence to show that the arrears are due to a failure to pay housing benefit or its equivalent.
- 18 The Tribunal was satisfied having regard to the written and verbal submissions from the Applicant's Representative that arrears of rent in the sum of £1500 had been outstanding when the AT6 was served and arrears as at the date of the Case Management Discussion were £3500. The Tribunal further noted that there was no evidence before it to suggest that the arrears were a result of issues with housing benefit. On that basis the Tribunal considered that the provisions of ground 8 had been met. On the basis that

ground 8 is a mandatory ground, the Tribunal did not therefore require to make a determination on grounds 11 and 12 and the reasonableness of granting the order.

- 19 The Tribunal therefore made an order for repossession against the Respondent.

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.

Ruth O'Hare

Legal Member/Chair

16 August 2019

Date