



**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/19/1871

**Re: Property at 22 Wellington Street, Montrose, Angus, DD10 8QD (“the
Property”)**

Parties:

**Thyme Property Developments Ltd, 62 New Wynd, Montrose, Angus, DD10 8RF
 (“the Applicant”)**

**Mr Jason McAndrew, 22 Wellington Street, Montrose, Angus, DD10 8QD (“the
Respondent”)**

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application for an order for possession should
be granted.**

Background:

The application was made on 14 June 2019. The application asked for an order for possession to be made on Grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 (the Act).

Attached to the application were:

1. the Tenancy Agreement for the property commencing 31 March 2017
2. Copy AT6 document dated 21 May 2019 with rental statement to 25 April 2019 and certificate of service by Sheriff Officers dated 22 May 2019.
3. Copy S 11 Notice,
4. Printout of rental payments for the property to 25 May 2019

A Case Management Discussion (CMD) was scheduled for 27 August 2019 and both parties advised of the date, time and venue.

The service was carried out by Sheriff Officers on 18 July 2019. The Tribunal thus considers that the appropriate notice has been given to the Respondent.

No representations were received from the Respondent. The Respondents had not contacted the Tribunal prior to the CMD and did not attend.

The Tribunal was satisfied that he had been appropriately notified of the application and the CMD.

The Case Management Discussion

The Applicant's representative Mr Lawson from Muir, Myles Laverty attended the CMD. The Respondent did not attend. The Applicant advised the Tribunal that no further payments had been received since the application was made. The Respondent had not contacted the Applicant. He referred the Tribunal to the documents lodged with the application, which are referred to for their terms and held to be incorporated herein. He further confirmed that there had been no suggestion that the Respondent was receiving or would be receiving relevant benefits.

There were no representations from the Respondent.

Findings in Fact:

- 1. The parties entered into an Assured Tenancy for the property with a start date of 31 March 2017 (Clause 1).**
- 2. Rent of £360 per month is payable monthly in advance (Clause 4)**
- 3. An AT6 document dated 21 May 2019 stating Grounds 8, 11 and 12 was served on the Respondent by Sheriff Officers on 22 May 2019**
- 4. The first day of raising proceedings was stated as 7 June 2019.**
- 5. At that time the arrears were £2,558.56.**
- 6. They were evidenced in the AT6 documentation by a rent statement.**
- 7. The Respondent has not made any payments towards the arrears since the application was made on 14 June 2019.**
- 8. The outstanding amount as of 27 August 2019 is in excess of £2,918.56.**
- 9. Clause 54 of the tenancy agreement narrates Grounds 8, 11 and 12 of Schedule 5 of the Act as reasons on which the tenancy agreement can be brought to an end.**

Reasons for the Decision:

The Tribunal make the decision on the basis of the written evidence lodged by the Applicant and the information given at the hearing by the Applicant.

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The Respondent did not make any written representations and did not attend the CMD. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case.

In terms of S 18 of the Housing (Scotland) Act 1988 (the Act), the tribunal shall not make an order for recovery of possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to the Act. In terms of S 19 (1) of the Act this requires an AT6 form to be correctly served in terms of S 19 (4).

In this case the AT6 document was based on Grounds 8, 11 and 12 of Schedule 5 of the Act. The notice period of the AT6 in terms of S 19 (4) (a) of the Act had to be 2 weeks. As established by the documents submitted, the notice period had been properly given. In terms of S 18 (6) (a) and (b) of the Act it is possible for these Grounds to be considered even if the tenancy is a contractual assured tenancy provided the tenancy terms make provision for the tenancy to be brought to an end on the ground in question.

The tenancy agreement narrates the relevant grounds.

Based on the rental statements the Tribunal is satisfied that Ground 8 of Schedule 5 applies as *“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." The monthly rent is £360. At the date of service of the AT6 document the arrears were £2,558.56. No further payments have been made. At the date of the CMD the arrears were in excess of £2,981.56. This is a mandatory ground and the Tribunal is satisfied that the arrears are not a consequence of a delay or failure in the payment of relevant benefits as stated in S 18 (3A) of the Act. The Tribunal grants the order for possession on that ground.

Based on the rental statements the Tribunal is satisfied that Ground 11 of Schedule 5 of the Act applies as *"whether or not any rent is in arrears on the date on which proceedings for possession are begun the tenant as persistently delayed paying rent which has become lawfully due"*. The rent statement shows that arrears have been accrued by persistent lack of payment or part payments since March 2018. The Tribunal applying its discretion in the matter considers that taking into account all relevant matters it is fair in all the circumstances to grant the order for possession on that ground.

The panel is satisfied Ground 12 of Schedule 5 of the Act : *"some rent lawfully due from the tenant:- (a) is unpaid on the date on which the proceedings for possession are begun; and (b) except where subsection (1) (b) of section 19 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings"* applies in this case and, applying its discretion in the matter considers that taking into account all relevant matters it is fair in all the circumstances to grant the order for possession on that ground.

Decision

The Tribunal grants an order for possession in terms of S 18 of the Act on Grounds 8, 11 and 12 of Schedule 5 of the Act.

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.

Petra Hennig-McFatridge

27 August 2019

Legal Member/Chair

Date