



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18(1) of the Housing (Scotland) Act 1988**

**Chamber Ref: FTS/HPC/EV/21/2879**

**Re: Property at 7/4 Sandilands Close, Edinburgh, EH16 4HS (“the Property”)**

**Parties:**

**Manor Estates Associates Limited, 11 Washington Lane, Edinburgh, EH11 2HA (“the Applicant”)**

**Mr Enrique Gimenez Golfe, 7/4 Sandilands Close, Edinburgh, EH16 4HS (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member) and Elaine Munroe (Ordinary 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 of the Property should be refused.**

**Background**

1. By application, received by the Tribunal on 19 November 2021, the Applicant sought an Order for Possession of the Property under Section 18(1) of the Housing (Scotland) Act 1988 (“the Act”). The principal Ground relied on was Ground 8 of Schedule 5 to the Act, namely that at the date of the service of the Form AT6 Notice under Section 19 of the Act and at the date of the Case Management Discussion, at least three months’ rent lawfully due by the Respondent was in arrears, but the Applicant also relied on Grounds 11 and 12 of Schedule 5 to the Act, namely that the Respondent had persistently delayed paying rent which had become lawfully due (Ground 11) and that some rent was lawfully due and was unpaid (Ground 12). The Applicant stated that the rent had been in arrears for two years and that they had no confidence that the Respondent would maintain any repayment arrangements

that were made or engage with any support provided. The Applicants had tried, unsuccessfully, to engage with the Respondent, to encourage him to seek support or to apply for any benefits that might be available to assist him. The Respondent had made various payment proposals, on all of which he had subsequently defaulted. In the circumstances, it was reasonable to grant an Order for Possession.

2. The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Parties, commencing on 11 July 2017 and, if not terminated by either Party on 12 January 2018, continuing thereafter on a monthly basis until terminated by either Party, and a Rent Statement showing arrears as at 2 November 2021 of £4,236. The rent stated in the Tenancy Agreement was £583 per month and the Applicant provided copies of letters to the Respondent intimating increases in the rent, which, at the date of the application, was £613 per month.
3. The application was also accompanied by a copy of a Notice served under Section 19 of the Act (Form AT6), advising the Respondent that the Applicant intended to apply to the Tribunal for an Order for Possession, that the Grounds relied on were Grounds 8, 11 and 12 of Schedule 5 to the Act and that proceedings would not be raised before 23 September 2021, together with evidence of service of the Notice on the Respondent, by sheriff officer, on 22 March 2022.
4. The Applicant also provided copies of emails to the Respondent, to which had been attached copies of documents signposting him to sources of possible advice and financial assistance, as required by the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. The relevant emails were dated 17 February, 15 July, 7 August, 4 October and 10 November 2021.
5. On 17 January 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 7 February 2022. The Respondent did not make any written representations to the Tribunal.
6. On 20 January 2022, the Applicant's solicitors provided an updated Rent Statement showing arrears of £4,347 as at 1 January 2022.
7. At a Case Management Discussion held by means of a telephone conference call on 22 February 2022, at which the Respondent was neither present nor represented, the Applicant's representative advised the Tribunal that she understood that the Respondent had made an application to the Tenant Grant Fund for assistance. A decision was imminent and, if approved, it was anticipated that the rent arrears would be cleared. She requested a continuation in the hope that the case would settle without the requirement of an Order for Possession.
8. The Tribunal noted that it appeared that a resolution might be achieved and was happy to grant the continuation sought.
9. A Second Case Management Discussion was held by means of a telephone conference call on 4 April 2022. The Respondent was not present or represented.
10. The Applicant's representative advised the Tribunal that the outcome of the Respondent's application to the Tenant Grant Fund was still not known. Meanwhile, however, the rent arrears had been reduced to £1,784, but the Applicant was reluctant to withdraw the application when the arrears were still

so high and the outcome of the application to the Tenant Grant Fund still uncertain. In these unusual circumstances, she requested a further continuation.

11. The Tribunal accepted that the Tenant Grant Fund is dealing with a very large number of applications and that its decisions are, therefore, taking a long time. The Tribunal would normally have been reluctant to grant successive continuations but accepted that the circumstances of the present case were very unusual, given that the arrears had been significantly reduced. The Tribunal accepted that, as the amount of arrears remained substantial and the rent had been in arrears for more than two years, it was not unreasonable for the Applicant to wish to keep open the option of asking for an Order for Possession, whilst affording the Respondent one further opportunity of clearing the arrears or reducing them to such a level as to render the application unnecessary. In all the circumstances, the Tribunal was prepared to allow one further continuation, but stressed that, unless it was felt necessary to progress to a full evidential Hearing, it would determine the application at the continued Case Management Discussion. In the meantime, the Tribunal would issue a Direction requiring the Respondent to provide the Tribunal with an update on the status and progress of his application to the Tenant Grant Fund.
12. The Tribunal issued the Direction to the Respondent, but the Respondent failed to comply with it.
13. A Third Case Management Discussion was held by means of a telephone conference call on the morning of 25 May 2022. The Applicant was represented by Ms Kirsty Donnelly of TC Young, solicitors, Glasgow. The Respondent was neither present nor represented. Ms Donnelly told the Tribunal that the arrears now stood at £1,084 but that her instructions were to seek an Order for Possession, as the Respondent's payments to reduce the arrears were sporadic and there was no agreed payment plan. The Respondent had failed to engage with the Applicant or with the Tribunal and the Applicant had no confidence that the arrears would continue to be reduced or paid off in full. She understood that the Respondent's application to the Tenant Grant Fund had not been progressed as he had been unable to provide evidence that his income had reduced as a result of the pandemic. The Respondent had had the advantage of an extended period of notice as a result of the temporary Coronavirus Regulations and the Applicant had been reasonable in allowing the Respondent additional time, in the hope that his application to the Tenant Grant Fund would be successful, but it now appeared that it would not succeed. The Respondent had not complied with the Tribunal's Direction to provide an update on that application.

### **Reasons for Decision**

14. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

15. Section 18(1) of the Act states that the Tribunal shall not make an Order for 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. By Section 18(3) of the Act, if the Tribunal is satisfied that any of the Grounds in Part I of Schedule 5 is established, the Tribunal shall make an Order for Possession.
16. The present application is made under Ground 8 of Part I of Schedule 5 and also under Grounds 11 and 12 of Part II.
17. Ground 8 of Schedule 5 to the 1988 Act, as amended by the Coronavirus (Scotland) Act 2020 provides that the Tribunal may make an Order for Possession if, both at the date of the service of the Notice required under Section 19 of the 1988 Act (the Form AT6 Notice) and at the date of the Hearing at least three months' rent lawfully due from the tenant is in arrears and the Tribunal is satisfied that it is reasonable to grant the Order.
18. The Tribunal was satisfied from the emails that had been sent to the Respondent on 17 February, 15 July, 7 August, 4 October and 10 November, all 2021, that the requirements of The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 had been met by the Applicant.
19. The Tribunal was also satisfied that, both at the date of service of the Form AT6 Notice and at the date of the First Case Management Discussion the arrears of rent lawfully due by the Respondent to the Applicant exceeded three months. The arrears had been less than three months by the time of the Second and Third Case Management Discussions but, in the event, the Tribunal did not have to determine whether the relevant date for the purposes of Ground 8 of Schedule 5 to the Act was that of the First Case Management Discussion or the latest one.
20. The Tribunal noted that, at the date of the application, the rent arrears had been £4,236 and that at 1 January 2022, had risen to £4,347. By the time of the Second Case Management Discussion, however, the arrears had fallen to £1,784, and the Applicant's representative had confirmed that the level now stood at £1,084. The Tribunal recognised that the Respondent had had the benefit of six months' notice and noted that he had not at any time engaged with the Tribunal process and had failed to comply with a Tribunal Direction, but it was evident that he had made significant progress in reducing the arrears and, whilst there was no formal payment plan in place and no certainty that the pattern of paying down the arrears would be continued, the Tribunal's view was that the Respondent had made considerable efforts to improve the situation. This was despite the fact that his application to the Tenant Grant Fund had, to date, been unsuccessful.
21. Having considered all the evidence before it, the Tribunal decided on balance that it would not be reasonable to make an Order for Possession of the Property under Ground 8 of Schedule 5 to the Act.
22. The application had also been made under Grounds 11 and 12 of Schedule 5 to the 1988 Act. Ground 11 applies where the tenant has persistently delayed paying rent which has become lawfully due, and Ground 12 covers the situation where some rent is unpaid on the date on which the proceedings are begun and on the date of service of the Form AT6 Notice. Both Grounds are, however, subject to the reasonability test and the view of the Tribunal was that, although there was an historic record of persistent delay and there was no doubt that some rent was due at both the relevant dates for Ground 12, the position had altered so much over the past four months that it would not be

reasonable to make an Order for Possession under either Ground 11 or Ground 12 of Schedule 5 to the Act.  
23. The Decision of the Tribunal was unanimous.

### **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.**

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**Legal Member/Chair**

**25 May 2022**  
**Date**