



**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/19/2331

**Re: Property at 2 Donaldson Road, Methilhill, Methil, Fife, KY8 2LB (“the
Property”)**

Parties:

**Mrs Penelope Anne Wiewiorka, Drey Cottage, New Gilston, Fife, KY8 5TF (“the
Applicant”)**

**Ms Margaret Inglis, 2 Donaldson Road, Methilhill, Methil, Fife, KY8 2LB (“the
Respondent”)**

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Applicant was entitled to an order for
possession of the property and the ejection of the Respondent from the
property under Grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland)
Act 1988**

Background

1. By application dated 17 July 2019 the Applicant’s representative Mrs Emily Morrison, Wards Cottage, Wards Estate, Gartocharn applied to the Tribunal for an order for possession of the property and the ejection of the Respondent as a result of alleged rent arrears due by the Respondent to the Applicant. The Applicant’s representative submitted a rent statement, a short assured tenancy agreement, a letter of authority from the Applicant, and a letter to the Respondent advising of the change of landlord, Form AT6 with certificate of delivery and Section 11 Notice.

2. Following further communications between the Tribunal administration and the Applicant's representative the Tribunal received copies of a Trust Deed signed by the Respondent, confirmation of the Applicant's authority to recover arrears of rent due to the previous landlord and a revised rent statement confirming the arrears sought at the date of the application amounted to £1319.00.
3. By Notice of Acceptance dated 10 September 2019 a legal member of the Tribunal with delegated powers accepted the application and a Case Management discussion was assigned.
4. Intimation of the Case Management Discussion was given to the Applicant's Representative by post on 20 September 2019 and to the Respondent by Sheriff Officers on 24 September 2019.

The Case Management Discussion

5. A Case Management Discussion was held at Fife voluntary Action, 16 East Fergus Place, Kirkcaldy on 24 October 2019. It was attended by the Applicant's representative, Mrs Emily Morrison. The Respondent did not attend and was not represented. As the Tribunal was satisfied that the Respondent had been given proper notice of the Case Management Discussion by Sheriff Officers the Tribunal determined to proceed in the absence of the Respondent in accordance with Rule 29 of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Rules").
6. For the Applicant Mrs Morrison explained to the Tribunal that the Respondent was in receipt of Housing Benefit that was being paid direct to the Applicant in the sum of £444.00 per month. The Respondent was not making any payment towards the shortfall which amounted to £76.00 per month. The arrears at the date on which the Form AT6 was served consisted of the pre 4 October 2017 arrears of £3492.62 and the post signing of the Trust Deed arrears of £1319.00. The current arrears post the signing of the trust deed amounted to £1453.44 and the pre-trust deed arrears remained at £3492.62 although it was anticipated that a dividend of about 15p in the pound would be paid to creditors. It was Mrs Morrisons submission that Grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 had been satisfied. There were more than three months rent of £520.00 per month outstanding at the date of service of the AT6 and at the date of the Case Management Discussion and this was a mandatory ground for possession. The Respondent persistently delayed paying rent and some rent was lawfully due in terms of grounds 11 and 12.
7. Mrs Morrison went on to say that she had been contacted by Fife Council for a reference for the Respondent and had been told by her that a house had been allocated to her but was being refurbished. She had also been told by a contractor who had attempted to carry out repairs at the property that the Respondent had packed her belongings in boxes in preparation for moving

out of the property. Mrs Morrison confirmed that the Respondent's granddaughter who was aged about 10 lived with her. She also said the Respondent had previously indicated she wished to have a Notice to Quit served on her as the property was too large for her as she wanted a two bedroom rather than three bedroom property.

8. Mrs Morrison referred the Tribunal to the documents provided with the application and asked that the order sought be granted.

Findings in Fact

9. The Respondent entered into a Short Assured Tenancy Agreement with Andrew Wiewiorka on 5 December 2011 which endured until 6 June 2012 and continued thereafter by tacit relocation.
10. Andrew Wiewiorka transferred title to the property to the Applicant on 9 January 2019 and the Applicant assumed all the landlord's rights and obligations from before and after that date.
11. The Respondent signed a Trust Deed for Creditors on 4 October 2017.
12. Arrears of rent amounting to £3492.62 were claimed by the Applicant as a debt in the Respondent's Trust Deed.
13. The Respondent accrued rent arrears post 4 October 2019 up to 6 July 2019 in the sum of £1319.00.
14. The current post 4 October arrears amount to £1453.44.
15. There was more than three months' rent lawfully due by the Respondent as at the date of serving the Form AT6 and at the date of the Case Management Discussion.
16. The Respondent has persistently delayed paying rent which has become lawfully due and some rent is lawfully due.
17. Fife Council received intimation of the proceedings by way of a Section 11 Notice by email dated 19 July 2019.
18. The Respondent in her representations to the Tribunal has indicated her intention to vacate the property by 24 November 2019.

Reasons for Decision

19. The Tribunal was satisfied from the documents supplied by the Applicant's representative that the Applicant was entitled to claim any rent due by the Respondent both before and after title was transferred from her husband's name to her name as evidenced by the Assignation by Andre Wiewiorka dated 11 January 2019.

20. The Tribunal was satisfied from the documents provided that the Respondent had accrued rent arrears post the signing of a Trust Deed on 4 October 2019 up to the date of the application in the sum of £1319.00 and that the Applicant had subsequently received two payments of housing benefit that reduced the arrears at that time to £1255.44. The Tribunal was further satisfied that at the date of the Case Management Discussion the rent arrears post 4 October 2017 had risen to £1453.44. The pre 4 October 2017 arrears remained at £3492.62 although it seemed that the Applicant would receive a dividend payment of 15p in the pound under the Respondent's Trust Deed. The Tribunal was therefore satisfied that the Applicant could demonstrate that the Respondent had accrued rent arrears of more than three months rent both at the date of serving the Form AT6 and at the date of the Case Management Discussion. Therefore Ground 8 of Schedule 5 of the Housing (Scotland) Act was satisfied and this was a mandatory ground for granting the order sought.

21. The Tribunal was also satisfied from the documents produced and the evidence of Mrs Morrison that the Respondent persistently delayed paying rent in that she was not making up the difference between the rent that was due and the amount paid by way of Housing benefit. There was clearly rent due. It appeared that the Respondent was preparing to vacate the property and therefore it was reasonable to grant the order in terms of Grounds 11 and 12 of Schedule 5 of the 1988 Act also.

Decision

22 Having carefully considered the documentary evidence and the submissions of the Applicant's representative the Tribunal finds the Applicant entitled to an order for possession of the property and the ejection of the Respondent from the property Grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 having been established.

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.

Graham Harding

Legal Member/Chair

24/10/2019

Date