



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section under Section 18 of the
Housing (Scotland) Act 1988 (hereinafter referred to as “the 1988 Act”) for
Recovery of Possession of a Short Assured Tenancy**

Chamber Ref: FTS/HPC/EV/21/2639

Re: Property at 33/2 Restalrig Road, Edinburgh, EH6 8BD (“the Property”)

Parties:

Ms Steff Hewer, 11 Marionville Avenue, Edinburgh, EH7 6AT (“the Applicant”)

**Mr Cesar Blanco Perez, Carlota Panakal Gonzales-Barros, 33/2 Restalrig Road,
Edinburgh, EH6 8BD; 33/2 Restalrig Road, Edinburgh, EH6 8BD (“the
Respondent”)**

Tribunal Members:

Karen Kirk (Legal Member) and Elizabeth Williams (Ordinary Member)

This Hearing was a Case Management Discussion fixed in terms of Rule 17 of the Procedure Rules and concerned an Application for Recovery of Possession of an assured tenancy under Section 18 of the Housing (Scotland) Act 1988. The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved. The purpose of the hearing was explained and it was understood a final decision on the Application could also be made.

Attendance and Representation

The Applicant was represented by Scott Runciman, Gilson Gray LLP.

The Respondents did not attend the Tribunal or provide written representations

Decision (In Absence)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an order against the Respondent for possession of the Property under section 18 of the Housing (Scotland) Act 1988.

Preliminary Matters

In regards the non appearance of the Respondents Mr Runciman advised that the Respondents had received in terms of the Applications significant emails and the most recent correspondence was the email that he lodged of 9th December 2021 which intimated the application to Amend the Sum sought in the Payment Action. He confirmed same had been intimidated on the Respondents. This was his last contact with them.

Case Management Discussion

Mr Runciman confirmed that the Applicant sought an Order for Possession under section 18(1) of the 1988 Act, based on Grounds 8 of Schedule 5 of this Act. In support of same he referred to the fact that more than 3 months rent arrears were due both at the date of service and at today's hearing, the rent arrears having continued to increase since the date of service. The AT6 and execution of service having been carried out timeously and contained within the Application. No payments had been made since January 2021. He referred to the up to date rent statement lodged to confirm the position. Mr Runciman thereafter made submissions regarding reasonableness. He said there were a number of reasons why granting the order would be reasonable and he set them out as follows:

1. Mr Runciman referred to the arrears for the property being significant at over £10k and that this was the Applicant's one rental property and the non payment of rent has meant she has been struggling financially,
2. There has been no payments to rent at all since Jan 2021. Mr Runciman submitted that not paying anything even paying bits and pieces here and there was untenable for the Applicant,
3. Mr Runciman said that the fact there has been no contact, no real substantial response or appearance by the Respondents was significant and that the pre action requirements had all been met with numerous correspondence going back to Jan 2021 from solicitors and from the letting agents.
4. Mr Runciman referred to the case of *City of Glasgow Council at 1993 SCLR 592*. and submitted that in determining reasonableness it is for the Respondent to provide reasons

Mr Runciman sought an Order for Repossession. The Tribunal adjourned to allow him to make enquiry of the current letting agents to ascertain the circumstances of the Respondents. He returned and submitted that their knowledge was limited but that the Respondents were a couple, who were young, had been in employment and who did not have children residing in the property.

Findings in Fact and Law.

1. **The Tribunal was satisfied that a decision could be made at the Case Management Discussion and that to do so would not be contrary to the interests of the parties having regard to the Overriding objective. The**

Respondents had received notification of the proceedings and had not challenged same by written representations or attendance. The Respondents had been served by Sheriff Officer and Certificate of Service had been lodged with the Tribunal. There had been recent email contact with the Respondents on the basis further productions had been lodged by the Applicant and intimated on the Respondents.

2. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property.
3. The Tribunal was satisfied that the tenancy was in terms of Section 32(1) of the 1988 Act, a short assured tenancy for not less than 6 months and in relation to which a prescribed notice namely a valid AT5 had been served before creation of the short assured tenancy.
4. The Applicants were relying on Ground 8 under Schedule 5 of the 1988 Act only to make the Application.
5. In terms of Section 18 (3A) the Tribunal was satisfied that the respondents were in arrears of rent lawfully due of as at the date of the relevant and valid notice on 2nd April 2021 and at the date of the hearing and that these rent arrears comprised of more than 3 months rent.
6. The relevant AT6 notice was valid and had been served by sheriff Officer and received by the Respondents on 2nd April 2021.
7. Notice to the Local Authority had been given.
8. On 1st October 2021 the Respondents were sent pre action letters in addition to the correspondence sent by the lettings agents from January 2021. Copies of all the correspondence was lodged. The letters of 1st October 2021 were sent recorded delivery and a copy of the relevant proof of service was lodged.
9. A full Rent Statement for the property was lodged. Rent owed from same amounted to £11,705 as at 9th December 2021 and the Tribunal found this established that more than 3 months rent was in arrears both at the date on which the notice of intention to seek possession of the house was served and at the date of the hearing.
10. The Tribunal made enquiry in regards the Respondents circumstances and were told the Respondents had been in work at the time of the tenancy commencement and were noted as a young couple who lived alone.
11. Accordingly in terms of Section 18 of the 1988 Act the Tribunal granted an Order against the Respondent for possession of the Property.
12. The Tribunal on the circumstances before it and the evidence provided considered it was reasonable that an Order be granted.

Reasons for Decision

The Tribunal considered the evidence provided on behalf of the Applicant as being thorough and detailed. The Applicant had made credible and reliable submissions in support of grant of the Order. The Tribunal considered material factors in weighing the circumstance of parties as the Tribunal was aware was that the arrears were of a significant level, this was the only rental property of the Applicant, no payments had been made of any level since January 2021 and there were no vulnerabilities in terms of the Respondent's circumstances known. Accordingly in terms of Section 18 of the

1988 Act the Tribunal granted an Order against the Respondent for possession of the Property

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.

Karen Kirk

23 December 2021

Legal Member/Chair

Date