



**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/19/2941**

**Re: Property at Flat 1/2, 245 Paisley Road West, Glasgow, G51 1NE (“the Property”)**

**Parties:**

**Ms Amanda Stewart, 14 Riggend Road, Arbroath, DD11 2DR (“the Applicant”)**

**Mr Cameron Eoin Stewart, Flat 1/2, 245 Paisley Road West, Glasgow, G51 1NE  
 (“the Respondent”)**

**Tribunal Members:**

**Karen Kirk (Legal 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 on termination 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 Kirsty Morrison, TC Young Solicitors, 7 West George Street, Glasgow, G2 1BA. The Applicant also attended together with her mother, Anna McKay.

The Respondent did not attend the Tribunal or provide written representations

**Decision (in absence of the Respondent)**

**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

This case was continued to this fresh CMD following a procedural difficulty with the Application discussed at the first CMD on 19<sup>th</sup> November 2019. The Respondent was in attendance at same. At said Hearing the Application was adjourned to allow the Applicant an opportunity to consider the issue highlighted that the Tenancy Agreement at Clause 26 confirms that the Applicant in seeking to terminate same on the grounds of a material breach of tenancy, including rent arrears, requires to serve a Notice to Quit. Given no Notice to Quit had been served alongside the AT6 the Applicant sought an opportunity to consider matters further and the Tribunal considered this fair and just. The Application had proceeded in terms of Section 18(6) of the Housing (Scotland) Act 1988 where in the absence of a Notice to Quit the terms of the tenancy in terms of Section 18(6)(b) must make provision for it to be brought to an end. Given that clause 26 of the tenancy agreement states a Notice to Quit must be served the Applicant was in difficulty. The Tribunal has referred parties to the cases of *Royal Bank of Scotland v Boyle 1999 Hous LR 63* and *Eastmoor LLP v Bulman (2014) 6 WLUK*. Both parties had the benefit of a detailed CMD note and both having attended the hearing had fair notice of the issues before the Tribunal.

Prior to this Hearing the Applicant had served a new AT6 and Notice to Quit on 22<sup>nd</sup> November 2019 by Sheriff Officer. Said notice became live in respect to proceedings on 24<sup>th</sup> January 2020. The Applicant thereafter made an Application to Amend in terms of Rule 14 of the Procedure Rules. Same was sent to the Tribunal on 24<sup>th</sup> January 2020. The Respondent was intimated with this Application to Amend on 27<sup>th</sup> January by the Applicant by first class post on 27<sup>th</sup> January 2020. The Tribunal also ordered intimation of the Application to Amend separately on the Respondent and advised that a decision on the Amendment would be made at the hearing.

At the outset of the Hearing the Applicant's representative made submission in support of the Application being amended. She sought that the Tribunal exercise the overriding objective to allow the amendment and referred to the hearing being able avoid delay, be flexible in process and informal where necessary. She submitted further there was be no prejudice to the Respondent given the notice he received but if the Amendment was not granted there would be significant prejudice to the Applicant on the basis that the Respondent has made no payments to rent for the property since June 2019. She submitted further if the Amendment was not allowed the Applicant would require to re-serve all the same notices.

The Tribunal considered matters fully in respect to the interests of justice, the overriding objective and prejudice and fairness to both parties. Whilst the Applicant sought to amend the Application substantially, the Respondent having been at the last hearing and having had notice of the issue and the amendment being sought had not provided any written or oral representations opposing same. The notice period he had received was sufficient in terms of the Housing Scotland Act 1988, notice had been correctly received, he had been made aware of the issues by the Tribunal at the last hearing and the Amendment had been intimated on him by the Applicant and the Tribunal before this Hearing. Accordingly given the fair notice, the Tribunal's overriding objective and the fact that the Tribunal requires to be flexible and efficient the Legal Member allowed the Amendment and proceeded with the Hearing on the basis of the Amendment.

## **Case Management Discussion**

It was 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 she 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 now amended Application. The Applicant's representative further confirmed she sought that the Tribunal grant the Order on the basis that Ground 8 was established leaving the Tribunal in her submission no discretion. The rent due amounted to as at November 2019 in the rent statement referred to as £7775. Rent payable per month was she submitted £450. The current arrears to date were £9125.93. The Applicant advised the last payment to rent was £100 in June 2019 by the Respondent. It was confirmed that the Applicant sought an Order for Possession based on Ground 8, section 18(1) of the 1988 Act only. In support of same the Applicant's representative 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 the Application and of service.

## **Reasons for Decision**

- 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. He had previously attended the first CMD. He was aware of the issues in the Application and had been served new notices by Sheriff Officer and had also received from the Tribunal and the Applicant notification of the Amendment Application which the Tribunal determined first as a preliminary matter. The Respondent had not challenged same and appeared at the Hearing to provide submissions.**
- 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 the 1988 Act, an assured tenancy dated 24<sup>th</sup> November 2017.**
- 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 in November 2019 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 and received by the Respondent on the 22<sup>nd</sup> November 2019.**
- 7. Notice to the Local Authority had been given.**

8. A full Rent Statement for the property was lodged. Rent owed from same amounted to £7775 as at November 2019 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. At the date of the Hearing the arrears were £9125.93 and the last payment to rent made was in June 2019.
9. 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

Legal Member/Chair

Date

24/2/2020.