



**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/19/3179**

**Re: Property at 6 Corthie Court, Stoneywood, Denny, FK6 5GU (“the Property”)**

**Parties:**

**Capita Trust Company Limited, C/O Touchstone, 2 Crescent Office Park,  
Clarks Way, Bath, BA2 2AF (“the Applicant”)**

**Mr Christopher Kiernan, Ms Marylee Kiernan, 6 Corthie Court, Stoneywood,  
Denny, FK6 5GU; 6 Corthie Court, Stoneywood, Denny, FK6 5GU (“the  
Respondents”)**

**Tribunal Members:**

**John McHugh (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that an order for possession of the Property should be  
made in favour of the Applicant.**

**Background**

The Applicant holds the landlord's interest and the Respondents the tenant's interest in a short assured tenancy in respect of the Property dated 31 October 2017.

The Applicant wishes possession of the Property to be granted in its favour in respect of the Respondents' failure to pay rent.

**The Case Management Discussion**

A Case Management Discussion (“CMD”) took place by conference call on 10 July 2020. The Applicant was represented by Melissa Wilson of Patten & Prentice Solicitors. The Respondents were neither present nor represented. The Tribunal

was satisfied that notification of the hearing had been given to the Respondents. The Respondents have taken no part in any stage of the proceedings. The CMD was a continued CMD. At the original CMD on 11 February 2020, the Tribunal had requested information about the fact that the Applicant was a different entity from that named on the tenancy agreement. The Applicant has now provided information confirming that there has been a change in ownership and that the Applicant is the new proprietor.

The Tribunal had also requested that the Applicant provide evidence of service of a Notice under section 11 of the Homelessness etc (Scotland) Act 2003 upon the local authority.

In advance of the CMD, the Applicant had confirmed that it could not evidence that the s11 notice which had accompanied its Application had been served upon the local authority. The Applicant had on 13 February 2020 served a replacement notice and produced evidence of this and a receipt from the local authority dated 14 February 2020.

The Applicant requested that the replacement s11 Notice should be accepted as sufficient to fulfil the legislative requirements.

The Applicant had originally claimed the sum of rent outstanding at the time of application of £1870.85 but had amended this prior to the 11 February CMD to the then outstanding figure of £2594.84. The Applicant provided the Tribunal shortly in advance of the CMD with an updated rent payment schedule which shows the current outstanding balance as £2125.67.

## **Findings in Fact**

The Applicant holds the landlord's interest and the Respondents the tenant's interest in a short assured tenancy dated 31 October 2017.

The Tenancy Agreement provides that rent is due at the rate of £482.67 per month and increases in accordance with an inflation based formula.

The obligation to pay rent is joint and several in terms of the Tenancy Agreement.

At the time of serving notice under section 19 of the 1988 Act the sum of £1448.01 was outstanding.

At the time of raising the Application the sum of £1870.85 was outstanding.

The sum of £2125.67 is currently outstanding by the Respondents to the Applicant in respect of unpaid rent.

More than three months' rent was outstanding both at the date of service of the notice under section 19 of the 1988 Act and at the date of the CMD. The Tenancy Agreement makes provision for termination for this reason.

## Reasons for Decision

### Section 11 Notice

Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 sets out the requirements for an application of the present kind to be made. It requires, among other things, the application be accompanied by "a copy of the notice given to the local authority by the landlord under section 11 of the Homelessness (Scotland) Act 2003 (if applicable)".

Section 11 of the 2003 Act inserted a new section (section 19A) into the Housing (Scotland) Act 1998 as follows:

#### *"19A Requirement to notify local authority of proceedings for possession*

*(1) Where a landlord raises proceedings for possession of a house let on an assured tenancy, the landlord shall give notice of the raising of the proceedings to the local authority in whose area the house is situated, unless the landlord is that local authority.*

*(2) Notice under subsection (1) above shall be given in the form and manner prescribed under section 11(3) of the Homelessness etc. (Scotland) Act 2003 (asp 10)."*

Regulations have been made under s11(3) being the Notice to Local Authorities (Scotland) Regulations SSI 2008/324. They provide a form to be used for the purposes of the notification by a landlord to a local authority.

The underlying purpose of the legislation is to provide local authorities with advance warning of the potential eviction of a tenant in order that the local authority can offer appropriate support and advice to the tenant with a view to avoiding the tenant becoming homeless.

In the present case, the Application to the Tribunal had been made on 1 October 2019. It was accompanied by a completed section 11 notification. There was an interval where the Applicant halted pursuit of the Application as it seemed to it that the Respondents were going to make up the rent arrears. The case was eventually recommenced. At the CMD on 11 February the then Chairperson noted the absence of evidence of service. The case was continued to a date in March for evidence of service to be produced. COVID 19 intervened and the March continued CMD required to be cancelled, with the current CMD on 10 July 2020 being fixed in its place.

The Applicant's representative realised on 13 February 2020 that their s11 Notice had been drafted but never sent to the local authority. Upon realising this, they sent a replacement notice to the local authority on the same day. The Applicant now

seeks to rely upon the replacement notice as sufficient to comply with the terms of s19A and invites the Tribunal to exercise its power under Tribunal Rule 2 (the overriding objective to deal with the proceedings justly) in respect of the matter.

The Tribunal notes an inherent confusion in the relevant rules. Tribunal Rule 65 requires an Application to be accompanied by a section 11 Notice, which suggests service of the notification will have taken place before making the application. Section 19A requires that the landlord "shall give" the notice without specifying a timescale. The form prescribed for the giving of notice in the 2008 Regulations requires the local authority to: "Take note that proceedings have been raised". This suggests the form being sent to the local authority at a time after the giving of proceedings.

In practice, most applicants send their notice more or less simultaneously with the making of their application.

In the current instance, the s11 notice comes more than four months after the making of the application. However, the replacement notice comes more than four months prior to the current CMD. That timescale is more than enough for the notice to achieve its practical aim (giving the local authority the chance to contact and assist the Respondent) and at least as much time as would be typical of the situation where an application and s11 notice are simultaneous.

The Tribunal considers that there is no breach of the requirements of s19A of the 1988 Act. Section 19A specifies no time for giving notice of the proceedings and in that respect the notification is unlike the notice required by s19 which is a pre-action requirement.

The Tribunal considers it appropriate in the particular circumstances of this case to apply the overriding objective to allow the Application to be granted despite the fact that the notice which accompanied the Application had not been served at the time of lodging with the Tribunal. The Tribunal has in mind that the alternative would be for the Applicant to go back to the beginning and serve fresh notices and a fresh Application which would produce substantial delay and prejudice to the Applicant in circumstances where the delay in the section 11 notice being given has caused no practical prejudice to the Respondents.

### Possession

More than three months' rent was outstanding both at the date of service of the notice under section 19 of the 1988 Act and at the date of the CMD. The tenancy agreement makes provision for the granting of possession on those grounds.

The Tribunal is unaware of any benefits related reason for delayed payment of the rent. An order for possession requires to be made in terms of section 18(3) of the 1988 Act.

## **Decision**

An order for possession of the Property will be made in favour of the Applicant.

## **Right of Appeal**

**In terms of Section 46 of the Tribunals (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.**

J. McHugh

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John McHugh, Legal Member/Chair

\_10 July 2020\_

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Date