

Housing and Property Chamber
First-tier Tribunal for Scotland



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 (“the 1988 Act”) and Rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/EV/19/0786

**Re: Property at Flat 7, 66 Cow Wynd, Falkirk, FK1 5EA
 (“the Property”)**

Parties:

**Mr David MacDonald and Mrs Edele MacDonald, c/a Marshall Wilson Law Group Limited, 2 High Street, Falkirk, FK1 5EA
 (“the Applicants”)**

**Marshall Wilson Law Group Limited, 2 High Street, Falkirk, FK1 1EZ
 (“the Applicants’ Representative”)**

Mr Thomas McFarlane, Flat 7, Cow Wynd, Falkirk, FK1 5EA (“the Respondent”)

Tribunal Member:

Susanne L. M. Tanner Q.C. (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) was satisfied that Grounds 11 and 12 in Part II of Schedule 5 to the 1988 Act were established by the Applicant, in that the Respondent has persistently delayed rent which has become lawfully due; some rent lawfully due from the Respondent was unpaid on the date upon which proceedings were begun and the Respondent was in arrears at the date of service of the notice under Section 19 of the 20016 Act; that rent arrears were not a consequence of a delay or failure in payment of relevant housing benefit or universal credit; that it was reasonable to grant an order for possession and made an order for possession in terms of Section 18(3) of the 1988 Act.

Reasons

1. Procedural Background

- 1.1. The Applicants' Representative made an application to the tribunal on 11 March 2019 in terms of Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act") and Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
- 1.2. The Applicants seek the Respondent's eviction from the Property in terms of Section 18 of the 1988 Act under Grounds 11, 12 and 14 of Schedule 5 to the 1988 Act.
- 1.3. The Applicants' Representative lodged with the Application:
 - 1.3.1. a copy of a Short Assured Tenancy agreement dated 1 November 2016;
 - 1.3.2. a copy of a Notice to Quit dated 8 February 2019;
 - 1.3.3. A copy of an AT6 notice dated 8 February 2019;
 - 1.3.4. 15 photographs (undated and without an inventory).
 - 1.3.5. Section 11 notice sent to the local authority.
- 1.4. A rent statement was requested by the tribunal from the Applicant's Representative.
- 1.5. On 1 April 2019, the Applicant's Representative produced a rent statement for the period to 30 April 2019. The Applicant's Representative stated that the level of rent arrears to 30 April 2019 was £2,497.00 and submitted that that would be relevant to the question of reasonableness.
- 1.6. The Application was accepted for determination by a tribunal on 16 April 2019. Both parties were notified by letters dated 25 April 2019 of the date, time and place of Case Management Discussion ("CMD") in relation to the Application on 6 June 2019. The Respondent was invited to make written representations in response to the Application by 17 May 2019. Both parties were advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this will not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do

so and the procedure has been fair. The Application paperwork and notification was served on the Respondent by Sheriff Officers on 29 April 2019.

1.7. The Respondent did not submit any written representations in response to the Application or any response to the tribunal's Directions.

2. Case Management Discussion ("CMD"): 6 June 2019, Wallace House, Maxwell Place, Stirling, FK8 1JU

2.1. Fiona Munn from the Applicant's Representative attended the CMD.

2.2. The Respondent did not attend the CMD, nor did he make contact with the tribunal or its administration to advise that he could not attend. The tribunal was satisfied that the requirements of Rule 24(1) of the 2017 Rules regarding the giving of notice of a hearing had been duly complied with and proceeded with the Application upon the representations of the Applicants' Representative and all the material before it, in terms of Rule 29 of the 2017 Rules.

2.3. The tribunal chair explained the purpose of the CMD in terms of Rule 17 of the 2017 Rules and stated that as parties had already been notified, the tribunal could do anything at a CMD which it may do at a hearing, including issuing a decision.

2.4. Ms Munn stated that she was seeking an order for possession on the grounds set out in the AT6, namely Grounds 11, 12 and 14.

2.5. Ms Munn made reference to the rent statement which had been lodged and confirmed that there had been no further payments since April 2019. A further £950 of rent arrears have accrued for rent due on 1 May and 1 June 2019. There has been no contact from the Respondent.

2.6. Ms Munn submitted that Grounds 11 and 12 were satisfied. Monthly rent has remained at £475.00 throughout the tenancy. The rent statement shows that he has persistently delayed paying rent. At the time that the AT6 was served he owed £1,547.00. At the time proceedings were raised on 11 March 2019 he owed £2,022.00.

2.7. Ms Munn confirmed that although there was no rent statement attached to the AT6 notice when it was served (nor photographs in relation to the condition of the Property) the Applicants had been in contact with the Respondent regarding rent arrears and had agreed and revised a payment plan with him, to which he has failed to adhere. Ms Munn stated that the Applicants themselves prepared a rent statement up to the point where there were arrears

of £1,097.00 and pass that to Ms Munn to raise proceedings. Ms Munn added in the additional rent payments due for 1 February, March and April 2019 before lodging with the tribunal. Ms Munn stated that if the matter was proceeding to a further hearing she could request the email correspondence between the parties with a view to lodging it. Ms Munn's primary submission was that it would be that it would be possible to grant the order today in terms of 11 and 12 in the sense that notice was given to the Respondent in the AT6 of the Grounds on which possession was being sought and the amount of the arrears, against a background there was communication between Applicants and Respondent about the rent being late. The Respondent had notice that the rent had been persistently late and he also had notice of the amount of the arrears at the time of the AT6 as £1,547.00. Ms Munn accepted that the AT6 had not been filled out entirely correctly as Ground 14 was mentioned in Part 3 rather than Part 2, but in relation to the rent grounds she submitted that fair notice had been provided that Grounds 11 and 12 were being relied upon and the particulars thereof. She submitted that the entirety of the form gives him fair notice of the grounds being relied upon.

2.8. Ms Munn stated that the rent due for the period up to 30 April is £2,497.00 which is the amount presently being sought in the related payment action CV/19/0787, although Ms Munn reserved her client's position to seek any further rent arrears for the period from 1 May 2019 until the date that the Respondent removes from the Property.

2.9. Ms Munn stated that the Respondent is not in receipt of any benefits.

2.10. In relation to Ground 14, Ms Munn submitted that the condition of the Property has deteriorated since the start of the tenancy. She made reference to photographs said to have been taken on 25 January and 26 February 2019 when she attended the Property. She did not have any photographs taken at the start of the tenancy. Ms Munn lodged an Inventory from the start of the tenancy with the consent of the tribunal, which simply stated what items of furniture were included in the tenancy and made no reference to the condition of the Property or its fixtures, fittings and contents.

2.11. The tribunal was not satisfied that there was sufficient information before it about the condition of the Property at the start of the tenancy in order to be satisfied that Ground 14 of Part II was established. Ms Munn submitted that she wished the Application to be dealt with today on the basis of the rent grounds rather than to adjourn to another CMD or to fix an evidential hearing in order to acquire the same. The tribunal therefore treated this as an amendment of the Application to delete Ground 14, to which it consented, and proceeded with the matter on the basis of Grounds 11 and 12.

3. The tribunal makes the following findings-in-fact:

- 3.1. There is a tenancy between the Applicants and the Respondent for the initial period from 1 November 2016 to 31 October 2017 and thereafter the tenancy has continued by tacit relocation on an annual basis.
- 3.2. Rent is payable by the Respondent to the Applicants in the sum of £475.00 per calendar month, monthly in advance, starting on 1 November 2016.
- 3.3. The AT6 (Section 19 notice) was served on the Respondent on 8 February 2019.
- 3.4. As at 8 February 2019 the Respondent had rent arrears of £1,547.00.
- 3.5. The AT6 notice included notice that the Applicants were intending to raise proceedings for possession of the Property on Grounds 11, 12 and 14 of Schedule 5 to the Housing (Scotland) Act 1988 ("the 1988 Act").
- 3.6. As at the date of the Application on 11 March 2019 there were rent arrears of £2,022.00.
- 3.7. As at 30 April 2019 there were rent arrears of £2,497.00.
- 3.8. The Applicants agreed to a payment plan with the Respondent. The Respondent has failed to adhere to the payment plan.
- 3.9. Further rent arrears of £950.00 have accrued in the period from 1 May 2019 to 6 June 2019.
- 3.10. The rent arrears are not a consequence of a delay or failure in the payment of Housing Benefit or relevant universal credit.
- 3.11. On 29 April 2019 the Respondent received the Application and notice of the Case Management Discussion. The Respondent was offered the opportunity to lodge any written representations he wished by 17 May 2019. He was told that he required to attend the Case Management Discussion on 6 June 2019 and that the tribunal may do anything at a Case Management Discussion which it may do at a hearing including making an eviction order. The Respondent has not submitted any written representations, made any contact with the tribunal or attended the Case Management Discussion.

3.12. Discussion

- 3.13. The tribunal was satisfied on the basis of the findings in fact that Grounds 11 and 12 in Part II of Schedule 5 of the Act are established, in that the Respondent has persistently delayed rent which has become lawfully due; some rent lawfully due from the Respondent was unpaid on the date upon

which proceedings were begun and the Respondent was in arrears at the date of service of the notice under Section 19 of the 20016 Act.

3.14. The tribunal considered in terms of Rule 18(4) that it was reasonable to make an order for possession. The Respondent has received the Application paperwork and notification of the CMD. The Respondent was offered the opportunity to submit written representations and did not do so. The Respondent owes £2,497.00 for the period to 30 April 2019. Further rent arrears of £950 have accrued to the date of the CMD. There is no information before the tribunal to suggest that there has been any delay or failure in payment to the Respondent of relevant housing benefit or relevant universal credit.

3.15. The tribunal chair advised Mss Munn about the procedures for review and permission to appeal of a decision as well as the fact that as the case was being heard in the absence of the Respondent, it would be open to the Respondent to apply to the tribunal for recall of any decision made in his absence and any such application would require the Respondent to state why it would be in the interests of justice to do so, in terms of Rule 30 of the 2017 Rules.

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.

S Tanner

**Susanne L. M. Tanner Q.C.
Legal Member/Chair**

6 June 2019