



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/19/0329

**Re: Property at Flat 2, 11 County Place, Perth, PH2 8EE
 (“the Property”)**

Parties:

**Hillcrest Enterprises Limited, 1 Explorer Road, Dundee, DD2 1EG
 (“the Applicant”)**

**TC Young, Solicitors, Melrose House, 69a George Street, Edinburgh, EH2 2JG
 (“the Applicant’s Representative”)**

**Mr Lee Scott, Flat 2, 11 County Place, Perth, PH2 8EE
 (“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 paying rent which has become lawfully due; some rent lawfully due from the Respondent was unpaid on the date on which proceedings for possession were begun and the Respondent was in arrears at the date of service of the notice under section 19 of the 1988 Act; considered that it was reasonable to make 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 Applicant's Representative made an application to the tribunal on 31 January 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 Applicant seeks the Respondent's eviction from the Property in terms of Section 18 of the 1988 Act under Grounds 11 and 12 of Schedule 5 to the 1988 Act.

1.3. The Applicant lodged with the Application:

1.3.1. A paper apart for Sections 2 and 5 of the Application;

1.3.2. a copy of the Assured Tenancy agreement dated 9 September 2004;

1.3.3. a copy of the AT6 Notice dated 4 September 2018;

1.3.4. a copy of the Notice to Quit dated 4 September 2018;

1.3.5. proof of service by Sheriff Officers dated 6 September 2018;

1.3.6. Section 11 notice sent to the local authority;

1.3.7. Special resolution on change of name of the Applicant company.

1.4. The Application was accepted for determination by a tribunal on 12 February 2019. Both parties were notified by letters dated 10 December 2018 of the date, time and place of Case Management Discussion ("CMD") in relation to the Application on 29 March 2019. The Respondent was invited to make written representations in response to the Application by 25 March 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.

1.5. The Application documentation and notice of the date, time and place of the CMD were served on the respondent by Sheriff Officers on 7 March 2019.

1.6. The Respondent did not submit any representations or make any contact with the tribunal.

2. CMD: 29 March 2019 at 1000h, Inveralmond Business Centre, Auld Bond Road, Perth, PH1 3FX

2.1. The CMD was held in relation to this Application and the conjoined civil application for payment (CV/19/0331).

2.2. Ms Nicola Caldwell from the Applicant's Representative attended the CMDs on behalf of the Applicant.

2.3. The Respondent did not attend the CMDs and made no contact with the tribunal's administration or venue. 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 Applicant's representative and all the material before it, in terms of Rule 29 of the 2017 Rules.

2.4. The tribunal noted that the Assured Tenancy was signed on behalf of both parties on 9 September 2004. The Landlord in the tenancy agreement is Gowrie Housing Trust. The Application documentation includes a special resolution showing the change of name to Hillcrest Enterprises Limited dated 28 May 2012. The initial tenancy term was for the period 9 September 2004 to 28 September 2004. Since then the lease has tacitly relocated on a monthly basis. The rent payable in terms of the lease is £270.71 per calendar month payable monthly in advance on the date of entry and thereafter on or before 1st of each month. Clause 5 provides for rent and service charge review in accordance with the Applicant's rental policy, namely once per year with one month's notice.

2.5. The tribunal noted that the proof of rental increases and rent statement to 25 January 2019 had been lodged with the Application documentation in the conjoined civil application. The Applicant's Representative lodged copies of the same documents in the eviction Application, with the consent of the tribunal, on the basis that the Respondent had previously been sent copies of both documents in respect of the conjoined proceedings, the Respondent has lodged no written representations in either Application and the Respondent has failed to attend the CMD.

- 2.6. The Applicant's Representative also lodged an updated rent statement to 4 March 2019, with the consent of the tribunal, on the basis that the Applicant's Representative sent a letter to the Respondent dated 13 March 2019 giving notice of an intention to amend the sum sought in the conjoined civil application to £961.44 in terms of Rule 14A; the Respondent has lodged no written representations stating that the amount is in dispute and the Respondent has failed to attend the CMD.
- 2.7. The Applicant's Representative stated that the rent increase letters show rent increases from 2009 onwards. The monthly rent from 1 April 2018 has been £426.64 per calendar month. This is reflected on the rent arrears statement.
- 2.8. The arrears as at date of service of the AT6 notice on 6 September 2018 were £1065.48.
- 2.9. The arrears at the time the Application was made on 31 January 2019 were £791.20.
- 2.10. The updated rent statement dated 12 March 2019 shows the current arrears figure as £961.44.
- 2.11. The Applicant's Representative submitted that the requirements of grounds 11 and 12 of the 1988 Act have been met and that the tribunal should exercise its discretion to make an order for possession on the basis that it would be reasonable to do so. The Respondent has been in arrears since 1 November 2016. The current monthly rental figure is £426.64. Housing Benefit payments are made directly to the Applicant. The Housing Benefit has been paid on time every month and there are no issues with Housing Benefit. The tenant should be paying £85.12 per month on an ongoing basis and there are arrears to pay off. The client has only received small payments sporadically, with the last one being £4.04 on 8 January 2019, as seen on the rent statement. It is the shortfall between Housing Benefit payments and the rent due which is causing the arrears to accrue. The Respondent has not made payment of the arrears. He ignores demands for payment which have been made by the Applicant. House visits have been attempted by the Applicant and the Respondent has not answered the door. The most recent communication sent by the Applicant to the Respondent prior to the notice of intention to increase the sum claimed in the civil application was, on 16 January 2019 when a letter was issued to the Respondent stating that they would be enrolling the cases with the tribunal. The Respondent has persistently delayed paying rent which has become lawfully due. Some rent lawfully due from the Respondent was unpaid on the day proceedings for possession were begun on 31 January 2019 and the applicant was in arrears at the date of service of the AT6 notice. The

Applicant believes the the Respondent to be single and have no dependents. He is residing alone in the Property. It is the Applicant's right to receive rent lawfully due. If the order for possession is not granted the Applicant would be prejudiced because they are not receiving the full sum due under the tenancy agreement.

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

- 3.1. There is an Assured Tenancy between the Applicant (in its previous name of Gowrie Housing Trust) and the Respondent dated 9 September 2004.
- 3.2. The initial tenancy term was for the period 9 September 2004 to 28 September 2004. Since then the lease has tacitly relocated on a monthly basis.
- 3.3. The rent payable in terms of the lease was £270.71 per calendar month payable monthly in advance on the date of entry and thereafter on or before 1st of each month.
- 3.4. Rent has increased in accordance with the tenancy terms and the monthly rental from 1 April 2018 onwards is £426.64.
- 3.5. The Section 19 notice (AT6) was served on 6 September 2018.
- 3.6. The AT6 notice specified that the Applicant was intending to raise proceedings for possession of the Property on Grounds 11 and 12 of Schedule 5 to the Housing (Scotland) Act 1988 ("the 1988 Act").
- 3.7. As at 6 September 2018, the date of service of the AT6 notice, the rent arrears were £1065.48.
- 3.8. As at 31 January 2019, when the Application was made to the tribunal, the rent arrears were £791.20.
- 3.9. As at 29 March 2019, the date of the Case Management Discussion, the rent arrears were £961.44.
- 3.10. Since 1 November 2016, the Respondent has been in arrears of rent.
- 3.11. Respondent has persistently delayed paying rent which has become lawfully due.
- 3.12. The rent arrears are not a consequence of a delay or failure in the payment of Housing Benefit or relevant universal credit.

4. Section 18(4) of the 1988 Act

4.1. The tribunal was satisfied that Grounds 11 and 12 of the 1988 Act had been established in that the Respondent has persistently delayed paying rent which has become lawfully due; some rent lawfully due from the Respondent was unpaid on the date on which proceedings for possession were begun and the Respondent was in arrears at the date of service of the notice under section 19 of the 1988 Act. The tribunal was satisfied that in all of the circumstances that it was reasonable to make an order for possession in terms of Section 18(4) of the 1988 Act.

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**

29 March 2019