

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 18(4) of the Housing  
(Scotland) Act 1988**

**Chamber Ref: FTS/HPC/EV/18/1299**

**Re: Property at 30a, Carron Road, Falkirk, FK2 7RR (“the Property”)**

**Parties:**

**Matheson Glynn, 3a Broughton Place, Edinburgh, EH1 3RL (“the Applicant”)**

**Mr Stewart McCulloch, 30a, Carron Road, Falkirk, FK2 7RR (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted without a hearing and made an Order for Possession of the Property.**

**Background**

By application, received on 25 May 2018, the Applicant sought an Order for Possession of the Property under Section 18(4) of the Housing (Scotland) Act 1988 (“the 1988 Act”), on the basis that Grounds 11 and 12 of Schedule 5 to the 1988 Act had been established and it was reasonable to grant the Order.

The application was accompanied by copy Short Assured Tenancy Agreement between the Parties, commencing on 15 May 2017 and ending on 16 November 2017 and, if not ended on that date, continuing on a monthly basis until, inter alia, ended by the Applicant giving the Respondent the required Notice in the prescribed format in terms of Section 19 of the 1988 Act of their intention to commence proceedings and then subsequently obtaining an order for recovery of possession on one or more of the grounds set out in Schedule 5 to the 1988 Act. The rent was £325 per month.

The application was also accompanied by a copy Form AT6 Notice and a Notice to Quit, both dated 20 April 2018 and evidence of service on the Respondent by sheriff officer on 20 April 2018. The Form AT6 Notice advised the Respondent of the

Applicant's intention to raise proceedings for possession under Grounds 11 and 12 of Schedule 5 to the 1988 Act on or after 4 May 2018.

A Case Management Discussion was held on 15 October 2018, at which the Legal Member agreed to adjourn the case for a three month period to monitor payments towards rent £325 and arrears £50 to be paid on the 22<sup>nd</sup> of each month. The Tribunal had been told by the Applicants' representative that the Parties had agreed that the housing element of the Respondent's Universal Credit entitlement would be paid directly to the Applicant's representative and the Respondent would make an additional payment of £50 per month on the 22<sup>nd</sup> of each month, to reduce arrears. The Tribunal had seen evidence that, as at 8 October 2018, the arrears stood at £1,595.84.

On 14 November 2018, the Tribunal notified the Parties of the date, time and venue of a further Case Management Discussion and the Respondent was invited to make written representations no later than 30 November 2018. The Respondent made no written representations to the Tribunal. The letter notifying the Respondent of the Case Management Discussion was served on the Respondent by sheriff officer on 15 November 2018, by means of the letterbox at the Property and a further copy being sent by ordinary first class letter.

### **The Case Management Discussion**

A further Case Management Discussion was held at STEP Stirling, Stirling Enterprise Park, John Player Building, Stirling, on the afternoon of 7 December 2018. The Applicant was represented by Mr James Redfern of Campbell and Dean Ltd, 12 Meadow Street, Falkirk. The Respondent was neither present nor represented at the Case Management Discussion.

The Applicant's representative told the Tribunal that, whilst the housing element of the Respondent's Universal Credit entitlement for October and November 2018 had been received, the Respondent had failed to comply with his agreement to pay an additional £50 per month towards the arrears, apart from the one payment received on 21 September 2018. Mr Redfern provided the Tribunal with an up-to-date Rental Statement, showing arrears as at 7 December 2018 of £1,595.84, together with copies of letters to the Respondent dated 25 October 2018 and 29 November 2018, advising the Respondent that he had not made the payments of £50 for October or November.

### **Reasons for Decision**

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states that the Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision. The Tribunal was satisfied that it had before it all the information and documentation it required and that it would decide the application without a hearing.

Section 18(4) of the 1988 Act provides that the Tribunal shall not make an Order for Possession unless it is satisfied that any of the Grounds in Part II of Schedule 5 to the Act is established and the Tribunal considers it reasonable to make the Order. Grounds 11 and 12 are in Part II of Schedule 5 to the 1988 Act.

Ground 11 applies if the tenant has persistently delayed paying rent which has become lawfully due, whether or not any rent is in arrears on the date on which proceedings are begun. Ground 12 applies where some rent lawfully due from the tenant is unpaid on the date on which proceedings for possession are begun and on the date of service of the Form AT6 Notice.

The rental statement seen by the Tribunal at the Case Management Discussion on 15 October 2018 showed that as at 11 May 2018, the rent was in arrears by £334.17. No payments had been received by the Applicant between that date and 21 September 2018, when the Applicant had received £325 by direct payment of Universal Credit and £50 directly from the Respondent. The Tribunal was satisfied that the Applicant had persistently delayed in paying rent that had become lawfully due and that the rent was in arrears both on the date on which proceedings were begun (25 May 2018) and the date of service of the Form AT6 Notice (20 April 2018), so the requirements of both Grounds 11 and 12 had been met.

The Tribunal further held that it was reasonable to grant the Order, as the Respondent had accepted the rent was in arrears, had agreed to an arrangement to pay off the arrears at £50 per month, but had failed to do so, part from one payment on 21 September 2018. The Respondent had not made any written representations to the Tribunal and had chosen not to attend or be represented at the Case Management Discussion

The Tribunal noted that the outcome of the Case Management Discussion of 15 October 2018 had been to adjourn the case for three months to monitor the success or otherwise of the agreement regarding clearing the arrears by instalments and that the present Case Management Discussion was taking place within that three month period, but the Tribunal was satisfied that notice of the present Case Management Discussion had been validly served on the Respondent by sheriff officer on 15 November 2018 and that the Respondent had not made any payments towards the arrears since 21 September 2018.

### **Decision**

The Tribunal determined that the requirements of Grounds 11 and 12 of Schedule 5 to the 1988 Act had been met and that it was reasonable to grant the Order sought. The Tribunal further decided that the application should be granted without a hearing and made an Order 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.

George Clark

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Legal Member/Chair

7 December 2018

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Date