

**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 of the Housing (Scotland) Act 1988**

**Chamber Ref: FTS/HPC/EV/18/1866**

**Re: Property at Turwhappie Cottage, Forfar, Angus, DD8 1XH ("the Property")**

**Parties:**

**Messrs D B Smith & Sons, Messrs D B Smith & Sons, Turwhappie Farm, Forfar, Angus, DD8 1HX ("the Applicants")**  
**(Represented by Ms Nicola Brown, Blackadders LLP, Solicitors, Dundee)**

**Mr Douglas Reid, Ms Jamie Reid, Turwhappie Cottage, Forfar, Angus, DD8 1XH; Turwhappie Cottage, Forfar, Angus, DD8 1XH ("the Respondents")**

**Tribunal Members:**

**Gillian Buchanan (Legal Member) and Melanie Booth (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that -**

**Background**

The application previously called for a Case Management Discussion on 7 November 2018 at which the parties were directed to produce certain documentation and information in advance of the Hearing on 18 December 2018.

The Applicants' representative produced to the Tribunal the following:-

- (a) By letter dated 13 November 2018, correspondence with Angus Council relative to Housing Benefit;
- (b) By letter dated 21 November 2018, further correspondence with Angus Council relative to Housing Benefit;
- (c) By letter dated 27 November 2018, copy text messages exchanged between the Applicants and the Respondents; and

- (d) By email dated 17 December 2018, an up to date Rent Statement showing the total rent arrears as at 18 December 2018 to be £13,140, Council Tax Payment Notice in respect of the Property and an email from the Applicants' representative to the First Respondent dated 10 December 2018.

The Respondents failed to comply with the directions issued to them and produced no information or documentation to the Tribunal.

#### The Hearing/Case Management Discussion

The Applicants were represented by partners, Mr Hector Hamish Smith and Mr David Fraser Smith, and their legal representative Ms Nicola Brown.

The Respondents were neither present nor represented.

The Tribunal was satisfied that it should proceed in the absence of the Respondents in terms of Rule 29 of the First-tier Tribunal for Scotland Housing & Property Chamber (Rules of Procedure) Amendment Regulations 2017 ("the Regulations").

The Applicants believe the Respondents may have removed from the Property based on:-

- (i) A Demand for Council Tax from Angus Council having been issued to the Applicants with effect from 28 November 2018;
- (ii) Oral confirmation from Angus Council that the Respondents had intimated that they had removed from the Property on 28 November;
- (iii) The children not having been seen leaving the Property to be taken to school for a period of around 3 weeks; and
- (iv) Curtains and blinds in the Property being closed.

The Applicants' representative therefore invited the Tribunal to grant the application and make an order for recovery of possession of the Property by the Applicants.

#### Findings in Fact & Reasons for Decision

- The parties entered in to a Short Assured Tenancy Agreement on 1 September 2014 for the Respondents to lease the Property from the Applicants;
- The term of the Tenancy was originally from 1 October 2014 to 1 April 2015;
- On the expiry of the original term of the tenancy the tenancy continued thereafter on a monthly basis;
- On 5 June 2018 the Applicants served on the Respondents a Notice under Section 19 of the Housing (Scotland) Act 1988 ("the Notice") in terms of which the Applicants intimated to the Respondents that they required possession of the Property on or before 19 June 2018.
- That as at the date of service of the Notice the Respondents were in arrears of rent lawfully due in excess of 3 months in terms of Ground 8 of Schedule 5 to the 1988 Act;

- That as at the date of the hearing on 18 December 2018 the Respondents are in arrears of rent lawfully due in excess of 3 months in terms of Ground 8 aforesaid;
- That, in respect of the level of rent arrears accrued, the Tribunal had no discretion but to make an order in favour of the Applicants for recovery of possession of the Property.

### Decision

The Tribunal granted the Applicants' application and made an order in favour of the Applicants for recovery of 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.**

Gillian Buchanan

 **Legal Member/Chair**

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**Date**

18/12/18