

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**

Chamber Ref: FTS/HPC/EV/18/1870

Re: Property at 8 Kerrystone Court, Dundee, DD4 8XJ (“the Property”)

Parties:

Mr Umar Hayat, 18 Kingsway, Dundee, DD4 7DE (“the Applicant”)

Mr John Gordon, 8 Kerrystone Court, Dundee, DD3 8XJ (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondent)

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

Background

This is an application dated 16th July 2018 brought in terms of Rule 65 (Application for order for possession in relation to assured tenancies) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant provided with his application copies of the short assured tenancy agreement, form AT5, section 19 notice (form AT6), Section 11 notice, rent arrears statement and relevant executions of service. All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The form AT6 intimated to the tenant that the landlord intended to raise proceedings for possession of the house on grounds 8, 11 and 12 of Schedule 5 to the *Housing (Scotland) Act 1988*.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 5th October 2018, and I was provided with the execution of service.

Case Management Discussion

A Case Management Discussion was held on 24th October 2018 at Caledonian House, Greenmarket, Dundee. The Applicant did not appear, but was represented by Mr Brown, solicitor. The Applicant's son also attended with Mr Brown. The Respondent did not appear, nor was he represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

I was invited by Mr Brown with reference to the application and papers to grant the order sought on grounds 8, 11 and 12 of Schedule 5 to the *Housing (Scotland) Act 1988*. He tendered a further rent arrears statement updated to today's date, which disclosed current arrears of rental of £2,763.83. The monthly rent for the property in terms of the short assured tenancy agreement is £600.00.

Statement of Reasons

In terms of Section 18(3) of the *Housing (Scotland) Act 1988* ("the Act"), if the Tribunal is satisfied that any of the grounds in Part I of Schedule 5 to the Act is established then, subject to subsections (3A) and (6), the Tribunal shall make an order for possession.

Ground 8 of Part I of Schedule 5 to the Act applies if both at the date of service of the notice under section 19 and at the date of the hearing, at least three months' rent lawfully due from the tenant is in arrears.

The Tribunal is not satisfied that ground 8 contained in Part 1 of Schedule 5 to the Act has been established. Albeit that the rental arrears as at the date of this application were £2,172.47 and therefore in excess of three months' of rental arrears, the arrears figure as at the date of the form AT6 (the notice under section 19) dated 30th May 2018 was only £1,267.23, a figure which is less than three months' rental arrears, in circumstances where the monthly rental is £600.00.

In terms of Section 18(4) of the Act, if the Tribunal is satisfied that any of the grounds in Part II of Schedule 5 to this Act is established, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

Section 18(4A) of the Act provides that in considering for the purposes of subsection (4) above whether it is reasonable to make an order for possession on Ground 11 or 12 in Part II of Schedule 5 to this Act, the First-tier Tribunal shall have regard, in particular, to the extent to which any delay or failure to pay rent taken into account by the Tribunal in determining that the Ground is established is or was a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit.

Section 18(6) of the Act provides that the First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless (a) the ground for possession is Ground 2 or Ground 8 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9, Ground 10, Ground 15 or Ground 17; and (b) the terms of the tenancy make provision for it to be brought to an end on the ground in question.

The Tribunal is, however, satisfied that grounds 11 and 12 contained in Part 2 of Schedule 5 to the Act have been established, and considers that it is reasonable to make an order for possession. The Tribunal has not been satisfied that rent is in arrears as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit. There has been no evidence to establish any such reason for rent arrears. The terms of the short assured tenancy agreement make provision for it to be brought to an end on the ground in question.

For the above reasons, the Tribunal shall make an order for possession.

Decision

In these circumstances, I will make an order for possession of the house let on the tenancy as sought in this application.

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.

N. Kinnear

Legal Member/Chair

24/10/18

Date