

**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(1) of the Housing (Scotland) Act 1988 and Section 16 of the Housing(Scotland) Act 2014**

**Chamber Ref: FTS/HPC/EV/18/1904**

**Re: Property at 17 Cameron March, Edinburgh, EH16 5XG (“the Property”)**

**Parties:**

**Royal College of Surgeons, Nicolson Street, Edinburgh, EH8 9DW (“the Applicant”)**

**Ms Kirstie Murray, 17 Cameron March, Edinburgh, EH16 5XG (“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 and that an Order for Possession should be made in terms of Section 18(1) of the Housing (Scotland) Act 1988.**

**Background**

By application, received by the Tribunal on 26 July 2018, the Applicant sought an order for possession of the Property under Section 18(1) of the Housing (Scotland) Act 1988 (“the 1988 Act”).

The application was accompanied by a Form AT6 Notice, dated 21 July 2018, which informed the Respondent that the Applicant intended to apply to the Tribunal for an order for possession on Ground 8 of Schedule 5 to the 1988 Act, with evidence of service of the Notice by sheriff officer on 6 July 2018.

The application was also accompanied by a Rental Statement showing arrears as at 4 August 2018 of £10,400. The monthly rent in terms of the tenancy (which had commenced on 4 April 2017) was £1,300 and no rent had been paid since the period ending 3 December 2017.

The Respondent made no written representations to the Tribunal.

### **The Case Management Discussion**

A Case Management Discussion was held at George House, 126 George Street, Edinburgh on the afternoon of 24 October 2018. The Applicant was represented by Scott Clair of Balfour and Manson, solicitors, Edinburgh. The Respondent was not present or represented at the Case Management Discussion.

The Applicant's representative told the Tribunal that the rent for the Property remained more than 3 months in arrears and that no rental payments had been received since the date of the application.

### **Reasons for Decision**

The Tribunal was satisfied that the tenancy, which was a Short Assured Tenancy, had commenced on 4 April 2017 and noted that it had seen a rental statement showing that no rent had been paid since the period ending 3 December 2017. The Tribunal accepted the evidence of the Applicant's representative at the hearing that no rent had been paid since the date of the rental statement (4 August 2018).

Ground 8 of Schedule 5 to the 1988 Act requires the Tribunal to grant an order for possession where, both at the date of service of the AT6 Notice (Notice of Proceedings for Possession) and at the date of the hearing, at least 3 months' rent lawfully due from the Respondent is in arrears.

Rule 17(4) of the Schedule to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Regulations") states that "The First-tier 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 that it required in order to make a decision and that, as the respondent had not made any written representations and was not present or represented, it was able to grant the application without a hearing.

Having seen the AT6 Notice and proof of service by sheriff officers on 6 July 2018 and satisfactory evidence in relation to arrears of rent, the Tribunal was satisfied that the requirements of Ground 8 had been met and that, consequently, the Tribunal was required to make the order sought in the application.

The Applicant's representative sought an award of expenses in terms of Rule 40 of the Schedule to the 2017 Regulations. That Rule permits the Tribunal to award expenses as taxed by the Auditor of the Court of Session against a party "*but only where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense*". The Applicant's representative's argument was that, by remaining within the Applicant's property, the Respondent's conduct and behaviour had been unreasonable and had put the Applicant to significant expense. The view of the Tribunal was, however, that a decision by a tenant to remain in a property until an order for possession has been obtained by a landlord could not be regarded as unreasonable and that, in any event, the conduct and behaviour had to have occurred in the conduct of the case and, as she was entitled to do, the Respondent had not participated in the proceedings. The Tribunal was not, therefore, prepared to make an award of expenses.

### **Decision**

The First-tier Tribunal determined that the requirements set out in Ground 8 of Schedule 5 to the Housing (Scotland) Act 1988 have been met and that in terms of

Section 18(1) of that Act, an order for possession should be made. The Tribunal refused the Applicant's request for expenses.

### 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.

G. Clark

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Legal Member/Chair

24 October 2018  
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Date