

**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/19/1926**

**Re: Property at 114 Harrison Avenue, Dundee (“the Property”)**

**Parties:**

**Mr Ian Falconer, 8a, West Grove Avenue, Dundee, DD2 1JN (“the Applicant”)**

**Ms Frances Beattie, 114 Harrison Avenue, Dundee (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatridge (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted.**

1. The Case Management Discussion (CMD) took place at Dundee on 16 September 2019. Present was the Applicant’s Representative Alec Campbell for Lara Letting Ltd and Peter Kinghorn of the Dundee North Law Centre for the Respondent.
2. The application for an order for possession in terms of Rule 65 had been received by the Tribunal on 20 June 2019 and was accepted for a Case Management Discussion (CMD) on 25 July 2019. The application was accompanied by a copy of the tenancy agreement for the tenancy commencing on 1 April 2016 with an initial rental period to 31 March 2017, copy S11 notice, copy AT6 dated 15 May 2019 with the earliest date of raising proceedings stated as 3 June 2019, and Notice to Quit dated 21 January 2019 for 31 March 2019, service confirmation of the AT6 and Notice to Quit on the Respondent by recorded delivery, rental statement and S 33 Notice dated 21 January 2019.
3. At the CMD the Applicant’s representative confirmed that the application is made in terms of Rule 65 and the process under which the application is made is S 18 of the Housing (Scotland) Act 1988 and that the application for repossession relies on ground 8 and ground 11 of Schedule 5 of the Housing (Scotland) Act

1988 and produced an up to date rent statement showing the arrears now standing at £3,186.45 as of the date of the CMD.

4. He moved for an order on the basis that the rent had been in arrears exceeding 3 months rent both at the time of the AT6 notice being served and on the date of the CMD.
5. The rent in terms of the tenancy agreement is £500 per calendar month and at the date of the CMD and on the date of the service of the Notice of Proceedings the rent was in arrears of at least 3 months rent lawfully due.
6. No correspondence had been received from the Respondents.
7. Mr Kinghorn for the Respondent confirmed that the Respondent does not oppose the application and accepts that the arrears are such that the Applicant has the right for an order.
8. He explained that the arrears arise to a degree out of a shortfall of Housing Benefit for the property but confirmed that there are no further Housing Benefit payments due and the Housing Benefit payments are up to date.
9. The documents are referred for their terms which are held to be incorporated herein.

#### **Findings in Fact:**

1. The property is let on a Short Assured Tenancy, which commenced on 1 April 2016 for a period of one year to 31 March 2017.
2. The tenancy agreement continued year to year on tacit relocation with an ish on 31 March of each year.
3. The agreed rent is £500 to be paid in advance with the due date on the 10th day of the month.
4. Notice to Quit dated 21 January 2019 for a date of removal of 31 March 2019 was served together with document S 33 notice by recorded delivery.
5. The rent arrears relevant to the application as the date of the CMD were £3,186.45 as per the table of arrears produced.
6. An AT6 notice was served recorded delivery on 15 May 2019 for a date of raising proceedings stated as 3 June 2019.
7. The arrears as of 15 May 2019, the date of service of the AT6 Notice as shown in the table of arrears were £3,823.77 which is more than 3 months rent.
8. There were backdated housing benefit payments made on 19 June 2019 leaving the arrears of rent at an amount of £3,186.45 as of the date of the CMD on 16 September 2019.
9. Both at the date of service of the AT6 Notice of Proceedings and as of the date of the CMD the arrears exceeded 3 months rent.
10. The AT6 document gives under part 3 as reasons Ground 8 and Ground 11 and explains in the notice that arrears of more than 3 months rent had accrued.

#### **Reasons for Decision:**

Rule 18 of the Rules of Procedure states:

- 18.—(1) Subject to paragraph (2), the First-tier Tribunal—
- (a) may make a decision without a hearing if the First-tier Tribunal considers that—
  - (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

- (ii) to do so will not be contrary to the interests of the parties; and
- (b) must make a decision without a hearing where the decision relates to—
  - (i) correcting; or
  - (ii) reviewing on a point of law, a decision made by the First-tier Tribunal.
- (2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

Given the information available to the Tribunal which is undisputed the Tribunal considered that it could make a decision in the case without a hearing. The Respondent had been advised of the date. His legal representative agreed that the facts were not in dispute and that the application was not formally opposed.

1. In terms of S 18 (1) of the Housing (Scotland) Act 1988 (the Act), the tribunal "*shall not make an order for recovery of possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to the Act*".
2. In this case the Tribunal is satisfied that the tenancy was terminated by the Notice to Quit giving in excess of 40 days notice to 31 March 2019. The Notice to quit ended the contractual assured tenancy to the annual ish.
3. The AT6 Notice in terms of S 19 was served stating the grounds, setting out the reasons and gave more than the required period of 2 weeks.
4. The tribunal then has to consider whether the Grounds 8 and 11 of Schedule 5 of the Act apply in this case. Ground 8 is a mandatory ground. The Respondent had confirmed that there was no issue of outstanding or unpaid Housing Benefit or other benefit. Both at the time of the service of the AT6 notice and at the time of the CMD the arrears exceeded 3 months rent. This was agreed by the Respondent's representative.
5. The notification bundle to the Respondent included the clear warning "The Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order or payment order".
6. The tribunal is satisfied that Ground 8 of Schedule 5 of the Act "*both at the date of the service of the notice under section 19 of this Act relating to the proceedings for possession and at the date of the hearing, at least three months rent lawfully due from the tenant is in arrears*" applies in this case and arrears of more than 3 months rent were evidenced at the date of service of the Notice of the Proceedings and at the CMD. This is a mandatory ground of granting possession as there is no indication that S 18 9(3A) of the Act applies. Furthermore, in so far as the requirement of Ground 8 is that at the date of the hearing 3 months rent has to be in arrears, a Case Management Discussion at which both parties have been advised to attend meets the requirements of a hearing in terms of Ground 8. The Respondent had been

clearly advised of the possibility that an order may be granted at the CMD in the notification correspondence.

7. The tribunal is satisfied Ground 11 of Schedule 5 of the Act: "*whether or not any rent is in arrears on the date on which proceedings for possession are begun the tenant has persistently delayed in paying rent which has become lawfully due*" applies in this case and, applying its discretion in the matter considers that taking into account all relevant matters it is fair in all the circumstances to grant the order for possession on that ground. It is not disputed that rental payments have been persistently in arrears and thus delayed for over a year since July 2017 as shown in the rental payment statement.

**Decision: The Tribunal grants the 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.**

Petra Hennig-McFatrige

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**Legal Member**

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**Date**

16.9.13