



**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/18/1995**

**Re: Property at 372 Colinton Mains Road, Edinburgh, EH13 9BS (“the  
Property”)**

**Parties:**

**Mr Ramesh Golkonda, 19 Craigmount Brae, Midlothian, EH12 8XD (“the  
Applicant”)**

**Mr Pradip Sutare, 372 Colinton Mains Road, Edinburgh, EH13 9BS (“the  
Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member) and Ann Moore (Ordinary 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 made an  
Order for Possession of the Property.**

**Background**

By application dated 1 August 2018, the Applicant sought an Order for Possession of the Property under Grounds 8, 11 and 12 of Schedule 5 to the Housing (Scotland) Act 1988 (“the 1988 Act”). The application was accompanied by a Rent Statement to 14 July 2018, showing arrears at that date of £4,320 and by copies of a Notice to Quit and a Form AT6 Notice, both dated 2 May 2018, with evidence of service of both notices by sheriff officer on 9 May 2018. The Notice to Quit required the Respondent to vacate the Property on or before 14 July 2018 and the Form AT6 Notice stated that proceedings would not be raised before that date and that the Grounds for possession relied on were Grounds 8, 11 and 12 of Schedule 5 to the 1988 Act.

On 15 October 2018, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written

representations by 1 November. The Respondent made written representations dated 19 October 2018.

In his written representations, the Respondent sought a postponement of the Case Management Discussion to enable him to obtain legal representation. He also made a number of allegations against the Applicant and stated that he needed time to lodge a counter-claim against the Applicant.

The Tribunal granted the request for a postponement.

The Case Management Discussion was held on 21 November 2018. The Respondent lodged further written representations and told the Tribunal that he had paid his rent every month, in cash, directly to the Applicant and that he was making a counter-claim in respect of money he had expended on the Property.

It was clear to the Tribunal that there was a clear conflict of evidence in relation to payment or non-payment of rent and the Tribunal continued the matter to a full hearing, to be held on 14 January 2019. The Respondent was directed to provide in advance of the hearing details and vouching of any sums he considered were due to him by way of a counter-claim.

On 28 December 2018, the Respondent wrote to the Tribunal, stating that, at the Case Management Discussion on 21 November, both parties had agreed that the date for the hearing should be after 23 January 2019, as he was not available before then due to personal commitments for a religious festival and that this had been confirmed by the Tribunal Member. The Tribunal Member could find no reference in his notes to such a request or agreement, but, although the Applicant's agent objected to a postponement, the Tribunal accepted the request of 28 December 2018 to postpone the hearing, to allow the Respondent to attend the religious festival.

In his letter of 28 December 2018, the Respondent advised that he was the applicant in an application against the Applicant in the present case and stated that he wished all the applications to be heard together. The Tribunal was not satisfied from the application to which the Respondent referred that it had any bearing on the question of unpaid rent which was the subject of the present application, so did not consent to the applications being heard together. The Respondent's application contained a number of allegations against the present Applicant, relating to repairs, landlord registration, HMO licensing, the holding of a deposit and a failure to give receipts for rent paid.

The Parties were advised that the hearing had been rescheduled to 31 January 2019.

On 21 January 2019 the Respondent wrote to the Tribunal to request that the hearing be postponed again, to allow for his own application(s) to be dealt with at the same time. The Tribunal refused that request for the same reasons as it had refused the request of 28 December 2018.

By letter dated 28 January 2019, the Respondent again requested a postponement, but this also was rejected as the grounds for the request were the same as those contained in the letter of 28 December 2018 and 21 January 2019.

At 16.42 on 30 January 2019, the Respondent provided the Tribunal with a Statement of Fitness for Work for social security or Statutory Sick Pay, dated 30 January and covering the period from 29 January to 3 February 2019. The Tribunal did not consider that this justified the postponement of the hearing at such a late stage.

### **The Hearing**

The hearing was held at George House, 126 George Street, Edinburgh on the afternoon of 31 January 2019. The Applicant was present and was represented by Neil Matheson of TC Young, solicitors, Glasgow and Edinburgh. The Respondent was not present or represented at the hearing.

The Applicant's agent provided the Tribunal with an updated rental statement showing arrears as at 14 January 2019 of £6,480 and advised the Tribunal that this demonstrated that, both at the date of service of the Form AT6 Notice and at the date of the hearing, the rent was more than three months in arrears. He asked the Tribunal to grant an Order for Possession on Ground 12 of Schedule 5 to the Housing (Scotland) Act 1988. In addition, he stated that the requirements of both Grounds 11 and 12 had been met and that, in relation to those Grounds, it was reasonable to grant the Order due to the high level of arrears and the fact that the Respondent was believed to be working, but was paying nothing towards his rent.

### **Reasons for Decision**

Ground 8 of Schedule 5 to the Housing (Scotland) Act 1988 provides that the Tribunal must grant an Order for Possession where, both at the date of service of a Notice under Section 19 of the 1988 Act (a Form AT6 Notice) and at the date of the hearing, at least three months' rent lawfully due from the tenant is in arrears. The Tribunal was satisfied that at both relevant dates the arrears had exceeded three months' rent and that it was, therefore, bound to make an Order for Possession.

Having decided to make an Order for possession under Ground 8, it was not necessary for the Tribunal to make further Orders under Grounds 11 or 12 of Schedule 5 to the 1988 Act.

### **Decision**

The Tribunal determined that the application should be granted 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**

31 January 2019  
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**Date**