



**Decision 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/19/2001**

**Re: Property at 11 Woodfoot Road, Hamilton, ML3 8LP (“the Property”)**

**Parties:**

**D&D Moncur, Jinglara Drum, Kinross-Shire, KY13 0UN (“the Applicant”)**

**Mr Donald Hanlon, Ms Margaret Charlene McEwan, 11 Woodfoot Road, Hamilton, ML3 8LP (“the Respondents”)**

**Tribunal Members:**

**Sarah O'Neill (Legal Member)**

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

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

**Background**

1. An application was received on 2 July 2019 under rule 65 of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”) seeking recovery of possession of the property under Grounds 8, 11 and 12 as set out in schedule 5 of the 1988 Act.
2. The application included: the tenancy agreement; and a copy of the two notices (one in respect of each respondent) required under section 19 of the 1988 Act (‘the AT6’). It also included a rent statement, showing the rent due up to and including 13 July 2019 to be £3,648.84.
3. Notice of the case management discussion, together with the application papers and guidance notes, had been served personally on both respondents by sheriff officer on behalf of the tribunal on 26 July 2019. The respondents were invited to make written representations by 16 August 2019. No written representations were received by that date.

4. On 30 July 2019, copies of two letters in identical terms sent by the applicant's representative, one addressed to each respondent, were received by the tribunal. These letters notified the respondents that the outstanding rent due was now £4668.84, and suggested that they obtain independent legal advice. The applicant's representative produced proof of delivery notifications at the case management discussion showing that these letters had been delivered and signed for on 31 July 2019.

### **The Case Management Discussion**

5. A case management discussion (CMD) was held on 2 September 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The applicant was represented by Miss Kirsty Morrison, paralegal at TC Young Solicitors, who gave evidence on its behalf. Neither of the respondents were present nor represented at the CMD.
6. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a CMD had been duly complied with. The tribunal delayed the start of the CMD by 10 minutes, in case the respondents had been detained. The tribunal therefore proceeded with the CMD in the absence of the respondents.

### **Evidence on behalf of the applicant**

7. Miss Morrison asked the tribunal to grant an order in favour of the applicant against the respondents for recovery of possession of the property. She referred on behalf of the applicant to the rent statement which was already before the tribunal, and produced an updated statement, which showed the outstanding rent up to and including 13 September 2019 to be £4668.84.
8. The rent statement showed that regular monthly payments of £470.76 had been received up until October 2018. No payments had been made since 16 October 2018.
9. The tribunal chairperson asked whether the payments up until October 2018 had been in respect of housing benefit/universal credit. Miss Morrison confirmed that the housing benefit payments of £470.76 had been paid direct to the applicant's letting agent each month, but that these had stopped in October 2018. She said that the letting agent had received no notification of a change of circumstances regarding the respondents, and that there had been no contact from the respondents regarding this.

### **Findings in Fact**

10. The tribunal made the following findings in fact:
  - The property is owned jointly by David and Diane Moncur, partners of the firm of D and D Moncur, which is named as the landlord on the tenancy agreement.

- There was a short assured tenancy in place between the applicant and the respondents. The tenancy commenced on 14 February 2014, running for six months until 15 August 2014, and continuing on a monthly basis thereafter until ended by either party.
- The monthly rent payable in terms of the tenancy agreement was £510 per calendar month in advance.
- The AT6 contained the prescribed information and was dated 22 May 2019. There was evidence that the two AT6 forms had been served on the respondents by sheriff officer on 14 June 2018. The tribunal was satisfied that the two AT6 forms had been validly served on each respondent.
- No notice to quit was required, as the tenancy agreement set out the relevant grounds for possession.
- As at both the date of service of the AT6 and the date of the CMD, the respondents were in rent arrears of at least 3 months.

### **Reasons for Decision**

11. Ground 8 as set out in Schedule 5 of the 1988 Act states:

‘Both at the date of 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’.

In terms of section 18 and Schedule 5 of the 1988 Act, if the tribunal is satisfied that ground 8 is established, then (subject to subsection 3A), the tribunal is required to make an order for possession. Section 3A provides that where ground 8 is established, and the rent is in arrears as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit, the tribunal shall not make an order for possession unless the tribunal considers it reasonable to do so.

12. The tribunal is satisfied on the evidence before it that the requirements for ground 8 are established. At least three months’ rent was due by the respondents both at the time the AT6 forms were served, and at the date of the CMD.
13. While it was clear that the respondents had previously been in receipt of housing benefit or universal credit, there was no evidence before the tribunal that the rent was in arrears as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit in terms of section 18 (3A) (b) of the 1988 Act. The tribunal is therefore required to grant an order for possession under section 18 and ground 8 in Schedule 5 of the 1988 Act.

14. Given that the tribunal finds ground 8 to be established, it did not consider further whether grounds 11 and 12 were also established.

### **Decision**

The tribunal grants an order in favour of the applicant against the respondents 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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

Sarah O'Neill  
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Legal Member/Chair

2/9/19  
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Date