

**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 (“the 1988 Act”) and Rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)**

**Chamber Ref: FTS/HPC/EV/18/2043**

**Re: Property at 51 Diana Avenue, Glasgow, G13 3JW  
 (“the Property”)**

**Parties:**

**Ms Mary Kelly, 29 Kestrel Road, Knightswood, Glasgow, G13 3QS  
 (“the Applicant”)**

**Mr Colin McInnes, c/o 29 Kestrel Road, Knightswood, Glasgow, G13 3QS  
 (“the Applicant’s Supporter”)**

**Mrs Elizabeth Brooke, 51 Diana Avenue, Glasgow, G13 3JW  
 (“the Respondent”)**

**Tribunal Member:**

**Susanne L. M. Tanner Q.C. (Legal Member)  
 Elizabeth Dickson (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) was satisfied that Ground 8 in Part I of Schedule 5 to the 1988 Act was established by the Applicant, in that both at the date of service of the notice under Section 19 of the 1988 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; that rent arrears were not a consequence of a delay or failure in payment of relevant housing benefit or universal credit; and made an order for possession in terms of Section 18(3) of the 1988 Act.**

## Reasons

### 1. Procedural Background

- 1.1. The Applicant made an application to the tribunal on 7 August 2018 in terms of Section 18 of the Housing (Scotland) Act 1988 (“the 1988 Act”) and Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”).
- 1.2. The Applicant seeks the Respondent’s eviction from the Property in terms of Section 18 of the 1988 Act under Grounds 8 of Schedule 5 to the 1988 Act.
- 1.3. The Applicant lodged with the Application:
  - 1.3.1. A paper apart entitled “Section 5: Possession/ Eviction Grounds”.
  - 1.3.2. a copy of the Short Assured Tenancy agreement dated 1 May 2012;
  - 1.3.3. a copy of a repairing standard letter (undated)
  - 1.3.4. a copy of the AT5 Notice dated 1 May 2012, signed by the Respondent;
  - 1.3.5. a copy of the AT6 dated 18 July 2018; with proof of service on 18 July 2018;
  - 1.3.6. a copy of a notice to Quit dated 18 July 2018
  - 1.3.7. Section 11 notice sent to the local authority;
  - 1.3.8. Copy rent statement of the applicant from 1 May 2012 to 1 August 2018.
- 1.4. The Application was accepted for determination by a tribunal on 20 August 2018.
- 1.5. A hearing took place on 27 November 2018. Reference is made to the Notes on the Hearing which were sent to parties following the hearing.
- 1.6. The hearing was adjourned to Friday 11 January 2019 at 10am.
- 1.7. The Respondent was ordered at the Hearing and by way of a Direction of the tribunal dated 27 November 2018 to provide to the tribunal’s administration by close of business on 4 January 2019 at the latest:

1.7.1. Medical information in relation to her fitness to participate in the hearing, including a soul & conscience letter, if appropriate; and

1.7.2. Details of any representative she has appointed.

1.8. Both parties were further notified by letters dated 28 November 2018 of the date, time and place of the adjourned hearing in relation to the Application. The Respondent personally signed for the letter on 29 November 2018.

1.9. The Respondent was invited to make written representations in response to the Application by 28 December 2018. No written representations were submitted.

1.10. On 3 January 2019 a letter was submitted on behalf of the Respondent, by Finnieston, Franchi McWilliams attaching a letter from the Respondent's General Practitioner, Dr Paul Costello, dated 27 December 2018 swearing on soul and conscience that he did not feel that the Respondent was fit to attend the hearing on 11 January 2019. The solicitors confirmed that they were not instructed by the Respondent to appear on her behalf at the hearing.

1.11. There was further correspondence between the tribunal's administration and the solicitors in which they stated that it could be implied from the provision of the soul and conscience letter that the Respondent was submitting a postponement request. The tribunal stated that it considered that the submission of the letter from the General Practitioner was in furtherance of the tribunal's first Direction and that the hearing would not be postponed. The Respondent and the solicitors who had been assisting her were again asked on 8 January 2019 to confirm by 5pm on 9 January 2019 whether they were acting as her representative and they stated that they were not. They stated that they understood that a neighbour of the Respondent would act as her representative.

1.12. The Respondent did not adhere to the second Direction of the tribunal to provide details of any representative she has appointed by 5pm on 9 January 2019.

1.13. The Respondent made contact with the tribunal's administration on 10 January 2019 stating that she was intending to attend the hearing the following day.

## **2. Hearing: 11 January 2019 at 1000h, Glasgow Tribunals Centre, York Place, Glasgow**

2.1. The Applicant attended the hearing with Colin McInnes, supporter.

- 2.2. The Respondent did not attend and no Representative attended on her behalf. The tribunal waited until 10.10am before commencing the hearing but no contact was made by the Respondent and the hearing proceeded in her absence. However, the Respondent attended the venue after the Hearing had concluded (see below).
- 2.3. The Applicant was advised by the tribunal chair of what had occurred procedurally since the last hearing date, the fact that the Respondent had not attended or sent a representative and the fact that the hearing would take place in her absence. The tribunal chair further explained the possibility of an application for recall of decision made in absence of the Respondent.
- 2.4. The tribunal moved on to consider the Application and hear submissions from the Applicant with reference to the documents.
- 2.5. The Short Assured Tenancy agreement was signed by both parties on 1 May 2012. The initial term began on 1 May 2012 for a period of 12 months and since then the lease has tacitly relocated on an annual basis. The rent payable is £520 per calendar month payable monthly in advance and there have been no rent increases.
- 2.6. The AT6 notice is dated 18 July 2018 and was delivered on 18 July 2018. It specified that possession was sought on the basis of Grounds 8 and 12.
- 2.7. The rent statement for the period to 1 August 2018 (number 5/8) showed that as at the date of service of the AT6 notice on 18 July 2018 there were £39,000 of rent arrears. The rent was over three months in arrears as at 18 July 2018.
- 2.8. The rent has remained at £520 per month from 1 September 2018 up to date. The Respondent has made no payments since the Application was made. The rent outstanding as at 11 January 2019 is £42,120, up to and including the rent due on 1 January 2019. The Applicant lodged an up to date rent statement showing the rent payments due until 1 January 2019.
- 2.9. There is no information before the tribunal to suggest that there has been any delay or failure in payment to the Respondent of housing benefit or relevant universal credit. The tribunal was satisfied that any rent arrears are not a consequence of a delay or failure in the payment of housing benefit or relevant universal credit.
- 2.10. The tribunal Chair stated that a decision had been made today and that an order for possession would be made. The Applicant's representative confirmed that she and the Applicant were aware that as the tribunal made the decision to

make an order for possession in the absence of the Respondent, the Respondent could make an application for recall in terms of Rule 30 of the 2017 Rules within 14 days of the decision, which would prevent any further action being taken by any other party to enforce the decision for which recall is sought until the application is determined by the tribunal under Rule 30(9).

2.11. The hearing concluded.

## **2.12. Attendance by Respondent after the hearing**

2.13. After the tribunal had made its decision to make an order for possession and the Hearing had concluded, the Respondent appeared in the venue at approximately 10.30 together with an acquaintance. The clerk advised the tribunal of this fact and the tribunal instructed the Clerk to speak to the Respondent to ascertain why she was late and inform her that the hearing had concluded and a decision had been reached by the tribunal.

2.14. The Respondent first stated that she thought the hearing was at 1100am and said that she had been told that yesterday by a member of the tribunal's staff. However, when the Clerk to the hearing showed her the letter notifying her of the date, time and place as being at 10.00am she then stated that she had been in a car accident on the way to the tribunal. The tribunal Clerk advised her that the hearing had concluded, the tribunal had made its decision and that the decision and order would be sent out to her. She was also advised that the accompanying letter would outline the procedures for recall, review and permission to appeal applications.

## **3. The tribunal makes the following findings-in-fact:**

3.1. There is a short assured tenancy agreement between the Applicant and the Respondent which was signed by both parties on 1 May 2012.

3.2. The initial term of the tenancy began on 1 May 2012 for a period of 12 months and since then the lease has tacitly relocated on an annual basis.

3.3. The rent payable is £520 per calendar month payable monthly in advance and there have been no rent increases.

3.4. The AT6 (Section 19) notice is dated 18 July 2018 and was served on 18 July 2018. It specified that possession was sought on the basis of Grounds 8 and 12.

- 3.5. As at the date of service of the AT6 notice on 18 July 2018 there were £39,000 of rent arrears.
- 3.6. As at 26 July 2018, there were in excess of three months' rent arrears lawfully due from the Respondent to the Applicant.
- 3.7. The rent has remained at £520 per month from 1 September 2018 up to date.
- 3.8. The Respondent has made no payments since the Application was made.
- 3.9. The rent outstanding as at 11 January 2019 is £42,120, up to and including the rent due on 1 January 2019.
- 3.10. As at the date of the hearing on 11 January 2019 there were in excess of three months' rent arrears lawfully due from the Respondent to the Applicant.
- 3.11. The rent arrears are not a consequence of a delay or failure in the payment of Housing Benefit or relevant universal credit.

### **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.**

**Susanne L M Tanner Q.C.**

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**Susanne L. M. Tanner Q.C.**  
**Legal Member/Chair**

**11 January 2019**