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/18/2964

Re: Property at 17 Newtongrange Place, Newtongrange, EH22 4DF ("the Property")

Parties:

Mr Iain Gaul, Mrs Fiona Gaul, 5 Wester Coates Terrace, Edinburgh, E12 5LR ("the applicants")

Mr Jamie Gilchrist, Ms Shelly Foreman, 17 Newtongrange Place, Newtongrange, EH22 4DF ("the respondents")

Tribunal Members:

Lesley Johnston (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the order for possession should be refused.

Background

1. By application dated 1 November 2018 submitted to the Tribunal under rule 65 of Schedule 1 to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ('the Regulations') the applicants seek an order for possession of the property at 17 Newtongrange Place, Newtongrange EH22 DF ('the property') in terms of section 19 of the Housing (Scotland) Act 1988 ('the Act').

2. The applicants are the landlords at the property. The respondents are the tenants at the property.

3. The applicants raised proceedings on the basis of rent arrears having accrued on the account initially in the sum of £3,280. At the hearings on 30 January and 22 May 2019, following additional payments made by the respondents on

22 and 23 January, the applicants claimed payment of the arrears in the reduced sum of £2,480.

4. The applicants also seek an order for payment from the respondents in respect of the rent arrears. That application was lodged on 1 November 2018 (ref: FTS/HPC/CV/18/2965). A separate decision has been issued in respect of that application.

Procedural history

5. The application was considered at a CMD on 3 January 2019. At the CMD it became apparent that the rent arrears had accrued initially in 2010. The respondent advised that they had not received any demand for payment of these sums in recent years.

6. The Tribunal identified the following issues in dispute:

   (i) Whether the rent the applicants claim is due has been demanded and if it is still lawfully due;
   (ii) Whether the AT6 was valid

7. The Tribunal identified the following facts agreed:

   (i) That the rent due for the property is £845 per calendar month;
   (ii) That the AT6 was served

8. The Tribunal determined that the issues to be resolved were:

   (i) When and whether there are rent arrears
   (ii) Legal submissions on whether the rent is lawfully due if it is found that there are arrears;
   (iii) Legal submissions on the validity of the AT6 form served on 12 October 2018.

9. A hearing was fixed for 30 January 2019. Prior to that hearing the Tribunal advised the parties that as part of the submissions on 'whether the rent is lawfully due' it wished to be addressed on how the Prescription and Limitation (Scotland) Act 1973 may affect matters. In particular, the parties were asked to address the Tribunal on section 6 and schedule 1, para (a)(v) of the Prescription and Limitation (Scotland) Act 1973.

10. At the hearing on 30 January 2019, the Tribunal therefore heard evidence and submissions on whether there were rent arrears and whether any rent arrears had been extinguished by the operation of prescription.

11. The Tribunal issued its decision in respect of prescription on 28 March 2019. The Tribunal was persuaded on the evidence that rent arrears were incurred between the period of 9 July 2010 (the first missed payment of rent) and 9 May 2011 (the last missed payment of rent). The Tribunal found that the

arrears had not prescribed owing to the operation of 'Clayton's Principle' and had carried through the rent account.

12. The Tribunal asked the parties, in light of the vintage of the arrears, to confirm whether or not they had further evidence as to the level of rent arrears which are now lawfully due to be paid.

13. The Tribunal directed that the adjourned hearing in the case would determine:

    (i) The level of rent arrears (if any) lawfully due to be paid by the respondents;
    (ii) The validity of the AT6;
    (iii) Whether at the date of service of the Notice of Proceedings and at the date of the hearing at least three months' rent lawfully due from the Tenants is in arrears (Ground 8 of Part I of Schedule 5 of the Act);
    (iv) Whether the Tenant has persistently delayed paying rent which has become lawfully due (Ground 11 of Part II of Schedule 5 of the Act).

14. A copy of the decision dated 28 March 2019 is appended to this decision.

15. The adjourned hearing was fixed for 22 and 23 May 2019.

16. On 15 May 2019 the Tribunal administration advised the Tribunal that the applicants' solicitors had withdrawn from acting.

17. In advance of the hearing, the applicants lodged the following:

    (i) Bank statement for Fiona Gaul and Ian Gaul dated 9 April 2019 showing payments in respect of January, February, March and April 2019;
    (ii) An updated schedule of rent payments showing payments made by the respondents up to and including 9 April 2019 showing the arrears to be £2,480.

18. In advance of the hearing, the respondents lodged a letter from the Royal Bank of Scotland to Shelley Foreman dated 3 April.

The Hearing on 22 May 2019

19. The adjourned hearing took place on 22 May 2019 at George House, George Street, Edinburgh.

20. All the parties were personally present at the hearing on 22 May 2019.

21. The applicants advised that following the withdrawal of their solicitor they were representing themselves at the hearing.

22. The respondents submitted a further two further documents at the hearing, although late. The documents comprised a Notice to Quit dated 6 March

2019 issued by the applicants' solicitors; and an AT2 Notice dated 6 March 2019 giving notice of an increase in rent from 9 May 2019 in the sum of £1,125. The applicants had no objection to the document being received late and placed before the Tribunal. The Tribunal exercised its discretion to allow the document to be received although late in terms of Rule 22.

23. The applicants confirmed that in light of the fact that the arrears claimed were in the sum of £2,480 (being less than 3 months' rent) at the date of the hearing, the applicants could not rely upon eviction in terms of ground 8 of Part I of Schedule 5 to the 1988 Act. The Tribunal did not therefore require to determine this matter.

The evidence from the parties

The level of rent arrears due to be paid

24. Mr Gaul gave evidence that the arrears were at the same level as the last hearing, namely £2,480. He advised that he had always accepted that these arrears had accrued in 2010 and 2011. There was never any dispute about the rental payments made by the respondents over the last several years. The missed payments were shown in the bank statements already provided to the Tribunal and to which he gave evidence on 30 January and detailed in the decision dated 28 March 2019.

25. Mr Gaul advised that the applicants started off paying on time in terms of the lease however over time the payments gradually got later and later until the arrears started to be incurred.

26. Mr Gilchrist gave evidence for the respondents on this matter. He advised that he had no way of proving or disproving the level of the rent arrears. He advised that the bank was unable to provide the respondents' copy bank statements for the relevant period. He referred to the letter from RBS dated 3 April in which it stated that the bank was "investigating [the respondents'] query regarding the statement for [the respondents'] closed account... I have ordered the statement for your closed account ending 3/94 from 01 January 2010 to 31 December 2012 and it will be delivered to your mailing address within 11 working days."

27. Mr Gilchrist told the Tribunal that when the bank statement arrived (which was not produced to the Tribunal) it simply contained an opening and closing balance. There was no real information on the transactions at that time.

28. Mr Gilchrist accepted that there was a liability to make payment in terms of the lease; that there were rent arrears; but advised that he was not in a position to provide evidence to challenge the level of arrears said to be due to be paid.

29. He accepted that some rent was outstanding as at the date of the proceedings and at the date of service of the notice of proceedings. However, he disputed the validity of the AT6 notice.

30. He disputed that there had been persistent delay in paying rent on the basis that rent had been paid regularly since 2012.

Why the respondents had fallen into arrears in 2010/2011

31. Mr Gaul advised that his understanding of why the rent arrears had accrued was that Mr Gilchrist had lost his job for a period of time and couldn't make the payments. The matter had been discussed at meetings and the applicants had been told that additional payments towards the arrears would be made. However, Mr Gaul accepted that there was no contact from the applicants to the respondents about payment of the rent arrears between 2012 and these proceedings for eviction being raised.

32. Mr Gilchrist advised that he fell into some financial trouble in 2010 as he lost his job and the rent arrears started to accrue. The reason there had been no further payments towards the arrears was that the applicants didn't notify him post 2012.

The AT6 notice

33. The parties were in agreement that the AT6 Notice was served.

34. There was a disagreement about whether a rent schedule was served with the AT6 Notice. The respondents referred to the Sheriff Officers Certificate of Citation in which no mention was made of a rent schedule.

35. The applicants referred to the note of the CMD in which the applicants' solicitor advised that it was their normal practice to include a rent schedule. In any event, a rent schedule had been served with the application on 2 November 2018.

36. No further evidence was led on the AT6 notice.

Reasonableness

37. Mr Gaul confirmed that there had been no contact from the applicants to the respondents in relation to the arrears from 2012 until the notice of these proceedings was provided to the respondents. However, he did not expect the tenants to forget about the rent arrears.

38. There had been no discussions about payment of the rent arrears following the proceedings being raised. Equally, the applicants had received no contact or explanation from the respondents as to why the additional payments had been made in January in advance of the hearing on 30 January.

39. Mrs Gaul explained that the reason they wanted to end the tenancy was due to a change in their circumstances. Mr Gaul explained that the applicants' daughter had recently completed a science degree and had been accepted to study a second degree in medicine. The applicants had looked at their assets and the obvious one to sell was the property. The property was never meant to be a long-term investment. The applicants have a big bank loan with an interest only mortgage. The property had gone up in value and the applicants had benefited from that. They now wished to sell the house to finance their daughter's education, who is now in her second year of study. The applicants have given her their commitment that they will help her so that she is not saddled with debt.

40. Mr Gaul told the Tribunal that the respondents were aware of the change in the applicants' circumstances. The applicants' desire to sell the house had been pointed out to the respondents in a meeting in 2017 at which point the respondents said they wished to buy the house. A further meeting took place in March 2018 at which point the applicants told the respondents that they had given them plenty of time to consider the matter and asked the respondents to move out by 28 June 2018. The respondents requested, following a discussion with the council, a section 33 notice and an AT6 notice. The date specified for the respondents to leave the tenancy was 23 July 2018. An email was sent by the respondents on 22 July advising that they were not moving out. Mr Gaul requested a meeting to which he received an email from the respondents advising that the police would attend if Mr Gaul turned up at the house, something which perplexed Mr Gaul to this day.

41. Mr Gaul explained that the respondents had been good tenants. In his view, the applicants had been understanding of the respondents' financial predicament which is why the rent arrears had not been chased and why the applicants had kept the rent at the same level from the beginning of the tenancy until the increase this month. In his view, the applicants had been more than reasonable.

42. Mr Gilchrist advised that the attempt to evict the respondents in 2018 had been on the basis that the tenancy was a short-assured tenancy. However, it transpired that the legal requirements for the creation of a short-assured tenancy had not been complied with and therefore the eviction could not be proceeded with. The applicants confirmed that was correct.

43. Mr Gilchrist advised that the reference to the police was on the advice of his solicitor. He was given legal advice at the time that the contact from Mr Gaul amounted to a "harassing landlord".

44. Mr Gilchrist also advised that the time they were asked to remove from the property coincided with the need for the boiler to be replaced. He submitted that the applicants had neglected their duties in relation to the maintenance of the property in relation to monitoring of electrical equipment; that there was no wire fitted carbon monoxide detector. In addition, when the respondents contacted the council in 2018 when they were first asked to remove, the council advised that the applicants were not registered as landlords with the local authority. The applicants became registered shortly thereafter.

45. Mr Gilchrist told the Tribunal that the applicants had recently applied for planning permission to create the property into a two-storey house. In Mr Gilchrist's view that was with a view to the property being so uninhabitable that the respondents will have to move.

46. In response to questioning from the Tribunal, Mr Gilchrist advised that the respondents reside at the property with their 8-month old daughter. Mr Gilchrist is employed on a full-time basis as a Global Lead Systems Engineer. Mr Gilchrist is in the fourth year of a Trust Deed entered into in 2015 in respect of debts accrued in the period of 2010 when he became unemployed. He has less than a year to go in terms of paying back the sums due in respect of the Trust Deed.

47. Ms Foreman is a clinical support worker. She is currently on maternity leave. She is employed on a full-time basis but anticipates returning to work on a part-time basis. She has taken one year of maternity leave and is receiving no pay from the end of this month for the next three months. The respondents receive no benefits other than statutory child benefit.

48. Mr Gilchrist explained that the respondents needed time to get a deposit together for a new property. Since Ms Foreman's credit rating is connected to his, her credit rating was adversely affected by the Trust Deed.

49. Mr Gilchrist told the Tribunal that they had no alternative housing arrangements in place. They made enquiries with the council before the CMD and the hearing on 29 January. They are on a waiting list for a tenancy with the Council.

50. Before the proceedings were raised, they made enquiries with private landlords, applied for several properties for which they paid deposits and credit check fees. However, they failed the credit checks.

51. The respondents had not made enquiries in relation to alternative accommodation since their contact with the council in January.

52. In response to Mr Gilchrist's evidence in relation to landlord registration, the maintenance at the property and the planning permission, Mr Gaul advised that as far as the applicants were aware they had been continually registered as Landlords. The planning permission was applied for on the basis that Mr Gaul is an architect and does a lot of work with house builders. He had obtained planning permission in order to sell it with the benefit of planning consent. Maintenance had been carried out in the house when requested by the respondents and he questioned why, if the property was in such a poor state of repair, the respondents continued to reside there.

Legal submissions

The validity of the AT6 Notice

53. The applicants made no submission in respect of the validity of the AT6 notice, but asked the Tribunal to take into account the legal authorities previously submitted in this respect by their solicitor. Those authorities were *Dudley MBC* v *Bailey* (1990) 22 HLR 424 and *Ravenscroft Properties Limited* v *Hall* [2002] HLR 33.

54. The respondents relied upon the representations made by their former solicitors dated 19 December 2018 and 25 January 2019 and the authorities to therein (*Torridge District Council* v *Jones* 1986 (HLR) 107 and A. Stalker, *Evictions in Scotland* (2007) pp 78 – 79).

55. Mr Gilchrist referred to *Torridge District Council* v *Jones* and the headnote at page 108 in which it was stated:

"(1) Section 33(2) of the Housing Act 1980 differentiates between the ground upon which possession is sought and the particulars of that ground;

(2) The object of the statutory notice is to bring to the tenant's attention the defect of which complaint is made to enable him to make a proper restitution before proceedings are commenced; the particulars required to be given in the notice must be sufficient to tell the tenant what it is he has to do to put matters right before proceedings are commenced; mere recitation of the grounds of which particulars are required to be given cannot amount to particulars within the meaning of the statute.

(3) In the present case, where the statute requires particulars of a ground such as "non-payment of rent" nothing short of a specification of the amount which is claimed could amount to a proper particular of the ground upon which possession is sought."

56. Mr Gilchrist submitted that the AT6 in this case simply stated the amount of the rent arrears which in the circumstances had come out of the blue. There was nothing to say how the rent arrears had accrued or the period to which the rent arrears related.

57. The Tribunal asked the parties for their submissions on whether it would be reasonable for the Tribunal, if it considered that the formal requirements had not been complied with, to dispense with the requirements of the Notice in terms of s19(b). The applicants' position was that it would be reasonable. They disputed that the notice and specification of the rent arrears had come out of the blue. The respondents submitted that he would need to seek legal advice but that it would not be reasonable for the reasons set out above and that since the notice was integral and fundamental to the whole process an exercise of discretion would be ill-placed.

58. As to legal submissions in relation to the grounds for eviction, the applicants had no legal submissions to make. They submitted that they had been reasonable with the respondents given the history of rental payments and the lack of rent increase. They submitted that they did not expect to be treated in this way by the respondents.

59. The respondents had no further legal submissions to make. Mr Gilchrist asked the Tribunal to take into account the evidence he had submitted. He submitted that he had been reasonable with the applicants. In his view, the fact that the rent had not been increased until recently was irrelevant.

Findings in Fact

The Tribunal made the following findings in fact on the evidence:

1. The Respondents held an assured tenancy in respect of the property;
2. The lease commenced on 9 July 2009;
3. The Respondents continue to reside in the property with their 8-month old daughter;
4. The rent due in respect of the tenancy was £845 per calendar month from commencement of the tenancy until 9 May 2019 when the rent increased to £1,125 per calendar month;
5. The rent was payable monthly in advance;
6. The rent account fell into arrears on the account from 9 July 2010 as follows:

(i) Between 28 June 2010 and 1 November 2010 the respondents paid no rent to the applicants;
(ii) On 1 November 2010 the respondents paid £845 to the applicants
(iii) On 30 November 2010 the respondents paid £535 to the applicants
(iv) On 14 December 2010 the respondents paid £300 to the applicants
(v) On 24 January 2011 the respondents paid £845 to the applicants
(vi) On 24 February 2011 the respondents paid £845 to the applicants
(vii) 1 April 2011 the respondents paid £845 to the applicants
(viii) Between 1 April 2011 and 30 June 2011 the respondents paid no rent to the applicants
(ix) On 30 June 2011 the respondents paid £845 to the applicants
(x) On 29 July the respondents paid £845 to the applicants
(xi) On 2 August 2011 the respondents paid £300 to the applicants
(xii) On 30 August 2011 the respondents paid £1145 to the applicants
(xiii) On 30 September 2011 the respondents paid £1145 to the applicants
(xiv) On 31 October the respondents paid £1145 to the applicants
(xv) On 30 November 2011 the respondents paid £1145 to the applicants
(xvi) On 30 December 2012 the respondents paid £845 to the applicants
(xvii) On 30 January 2012 the respondents paid £845 to the applicants
(xviii) On 29 February 2012 the respondents paid £845 to the applicants
(xix) On 30 March 2012 the respondents paid £845 to the applicants
(xx) On 2 April 2012 the respondents paid £300 to the applicants
(xxi) On 30 April 2012 the respondents paid £845 to the applicants
(xxii) Between 30 April 2012 and 2 January 2019 (inclusive) the respondents paid £845 per month in respect of the rent
(xxiii) An AT6 notice was served on 12 October 2018 in respect of these proceedings;
(xxiv) The rent account was in arrears as at the date of service of the AT6 (12 October 2018) in the sum of £4,125
(xxv) On 2 November 2018 at application for proceedings was lodged by the applicants.
(xxvi) The rent account was in arrears as at the date of raising proceedings (2 November 2018) in the sum of £3,280;
(xxvii) On 22 January 2019 the respondents paid £800 by way of an additional payment to the applicants
(xxviii) On 23 January 2019 the respondents paid £845 by way of an additional payment to the applicants;
(xxix) On 11 February 2019 the respondents paid £845 to the applicants
(xxx) On 11 March 2019 the Respondents paid £845 to the applicants
(xxxi) On 9 April 2019 the respondents paid £845 to the applicants
(xxxii) The rent arrears on the account as at the date of the hearing on 22 May 2019 are £1,635;
(xxxiii) The applicants did not issue any demands for payment between 11 October 2012 and the service of the AT6 on 12 October 2018;
(xxxiv) there was a failed attempt by the applicants to evict the respondents from the property in 2018 as a short-assured tenancy eviction;
(xxxv) as at the date the proceedings began some rent lawfully due to be paid by the respondents was unpaid;

(xxxvi) as at the date the AT6 was served some rent was lawfully due to be paid by the respondents was unpaid;

(xxxvii) The respondents have not found alternative accommodation

(xxxviii) Mr Gilchrist is in full-time employment

(xxxix) Ms Foreman is currently on maternity leave from a full-time position as a clinical support worker

(xl) The applicants desire to sell the property in order to fund their daughter's university course

Reasons for Decision

AT6 Notice

60. The AT6 Notice was served on each respondent by Sheriff Officers on 12 October 2012. The certificate of service states:

"I duly served a full copy of the AT6 Notice, upon [each respondent]..."

61. In Part 2, it stated the grounds upon which the applicants relied in full, namely grounds 8, 11 and 12.

62. In Part 3, it stated:

"We also inform you that we are seeking possession under the above grounds for the following reasons:-

You have accrued arrears of rent amounting to £4,125. Under and in terms of your Tenancy Agreement you are obliged to pay monthly rent of £850. Despite repeated requests, you have failed to do so and are now at least three months in arrears of rent."

63. There was no evidence to suggest that the rent schedule was served with the AT6. On that basis, the Tribunal proceeds on the basis that only the AT6 Notice was served on 12 October 2019.

64. In terms of section 19 of the Housing (Scotland) Act 1988, the Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless the landlords have served on the tenants a notice in accordance with section 19 or the Tribunal considers it reasonable to dispense with the requirement of such a notice.

65. The Tribunal may not exercise its discretion to dispense with the Notice if the applicant seeks repossession on ground 8. Since the applicants do not rely on ground 8, it is open to the Tribunal to exercise its discretion in this case in terms of section 19(b).

66. The Tribunal considered the authorities submitted by the parties.

67. In *Torridge Council* the court had to consider a notice given by a landlord to a tenant seeking possession of a property occupied by the tenant as a secure tenancy under section 33 of the Housing Act 1980. The provisions of section 33 are similar to section 19, in that proceedings for possession may not be entertained by the court if the notice is not first served containing inter alia the grounds and the particulars/reasons for taking the action.

68. In *Torridge* the particulars were stated to be "non-payment of rent". The tenant argued that the notice did not meet the statutory requirements on the basis of that the particulars were not sufficient.

69. The court allowed the Tenant's appeal. It held that the notice served to act as:

> "a warning shot across the bows of the tenant and the object of it is to warn him that unless he repairs what is stated as the ground upon which possession is going to be sought, he is going to be liable to court proceedings (per Oliver LJ at p 13)".

70. The court held:

> "It seems to me almost axiomatic that where a statute requires particulars of a ground such as this "non-payment of rent" to be stated, it must be nothing short of a specification of the amount which is claimed as being in arrear could, in my judgment at any rate, amount to a proper particular of the ground upon which possession was being sought.
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> [...]
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> Nevertheless, at the end of it all, I confess that for my part I find myself wholly unpersuaded that the mere recitation, almost in the same words of a part of the ground of which particulars are required to be given, can amount to particulars within the section. I cannot think the legislature can have intended that. It seems to me that it is plain that this subsection does require a specification sufficient to tell the tenant what it is he has to do to put matters right before the proceedings are commenced." (per Oliver LJ at pp 114 to 115)

71. In A Stalker, Evictions in Scotland, summarises the authorities at pp 77 to 78:

> "The purpose of the notice is to give information to the tenant to enable him to consider what should be done, in the period before proceedings are raised, which is in his power and which will best protect him against the loss of his home. However, there may be factors that weigh more heavily than any prejudice that is suffered by the tenant if he does not receive this notice. For example, if some form of notice has been given to the

tenant, albeit it not in the statutory form, any prejudice suffered by the tenant may be limited. Alternatively, the circumstances of the case may be such as to indicate, for example, that the tenant has abandoned the tenancy, or may disclose an unusually strong need on the part of the landlord to recover possession as soon as possible, such that the prejudice suffered by the landlord in serving the notice, with the attendant delay, would outweigh the prejudice suffered by the tenant in not receiving the notice. Clearly other matters may be taken into consideration, depending on the facts and circumstances of each case. The court may take into account matters which have occurred since the action commenced."

In relation to the need to state the particulars of the ground, Mr Stalker states:

> "In order to fulfil this requirement, the notice must give the tenant sufficient details of the circumstances that the landlord relies upon in asserting that a ground is made out; the purpose of the notice is to tell the tenant what complaint is made against him such that the tenant knows what he has to do in order to put matters right. The landlord should state in summary form the facts which he intends to prove in support of the stated ground. For example, if the ground for eviction is one of the rent arrears grounds under schedule 5 to the Act, the amount of the arrears should be stated or the notice must contain sufficient information so as to enable the tenant to calculate the amount that is due...
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> ... if insufficient particulars are given, the court cannot entertain the proceedings, unless the sheriff is persuaded to dispense with the notice, or to allow it to be altered or amended in terms of section 19(2)... a minor error in the particulars does not invalidate the notice (reference made to Dudley)."

72. The applicants relied upon *Dudley MBC* v *Bailey* (1990) 22 HLR 424 in which case the local authority relied on a notice which stated:

> "The reasons for taking this action are:
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> Rent due to council has not been paid in that as at the 16th day of January 1989 you are in arrears to the sum of £145.96."

73. An order for possession was granted. The county court judge refused to grant the order for possession on the basis that the notice was defective. The local authority appealed. The tenant applied for the order to be set aside on the basis that the notice did not give details as to how the money claim of the council had been calculated. If such details had been given he would have fully defended the proceedings on the ground that the sum claimed as rent comprised arrears for water

rates. The county court judge set the order aside on the basis that the particulars were incorrect – the sum shown on the notice comprised unpaid rent and rates. The local authority appealed the decision. On appeal, the court held:

> "The council gave the reasons for taking proceedings for possession on the ground of failure to pay rent by stating that the tenant had failed to pay £145.96 due from him as rent. That, in my judgment, is giving particulars of the grounds upon which the council was relying and gives a full explanation as to why the ground was relied upon."
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> [...]
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> The requirement for particulars is satisfied in my judgment, if the landlord has stated in summary form the facts which he then intends to prove in support of the stated ground for possession. Error in the particulars does not, in my judgment, invalidate the notice although it may well affect the decision of the court on the merits." (*per* Gibson LJ at pp 431 to 432)

74. The court allowed the appeal on that basis.

75. The applicants also relied upon *Ravenscroft Properties Ltd* v *Hall* in which the Court of Appeal had to consider the validity of the notices served at the outset of the tenancy akin to an AT5 notice. While this case does not relate to a notice for proceedings akin to the AT6, it gives guidance as to the approach to be taken by the courts in considering a statutory notice. The court held that the essential purpose that the statutory notice was intended to effect should be considered and the court should then ask if the notice had achieved that purpose. Next, the court should consider whether, taking into account the circumstances, and notwithstanding any errors or omissions, the notice would be quite clear to the reasonable person reading it so that he would not be misled by it or left in any reasonable doubt as to its effect. If the substance of the notice was sufficiently clear to the reasonable person reading it, the notice was likely to serve its statutory purpose (see Mummery LJ at pp 630 to 631).

76. In this case, the tenants were told that the rent arrears amounted to £4,125 owing to arrears of at least three months' rent. The Tribunal is satisfied that sufficient particulars were given in the AT6 to tell the respondents how the grounds had been made out. The Tribunal distinguishes this case from that of *Torridge*. In that case the notice simply stated that the particulars were "non-payment of rent". In this case the applicants have met the minimum threshold referred to by Oliver LJ in that the level of rent arrears have been specifically set out in AT6 and the applicants have also set out the number of months of arrears said to have accrued. This would have allowed the respondents to rectify the situation prior to the raising of proceedings. Indeed, shortly after proceedings were raised and before the substantive hearing in the case, the respondents did in fact make additional payments to the applicants to avoid a

grant of the application in terms of ground 8 and before the Tribunal had considered the merits of their defence regarding the validity of the AT6 notice.

77. In relation to the respondents' reliance on the rent having been stated to be "£850" on the notice instead of '£845', the Tribunal considers that this was a minor clerical error which did not in itself invalidate the notice (*Dudley* above).

78. The Tribunal therefore considers that sufficient particulars were given in the AT6. However, even if the Tribunal had decided that insufficient information had been set out in the AT6, the Tribunal would have exercised its discretion in terms of section 19(b) in respect that it would be reasonable to do so as the notice was served on both respondents; gave the respondents notice of the full grounds relied upon by the applicants; set out the level of arrears and how those arrears had been calculated; and therefore the prejudice to the respondents in the AT6 not setting out the date on which the arrears were incurred was limited.

The level of rent arrears lawfully due to be paid

79. It was a matter of agreement that the respondents held an assured tenancy of the property and were liable to make payment of rent in the sum of £845 monthly in advance.

80. Having established at the hearing on 30 January 2019 that rent arrears existed on the account; and that they had not prescribed, the Tribunal asked the parties whether they had any further evidence in respect of the level of arrears lawfully due to be paid. The applicants produced updated bank statements showing the payments made by the respondents since the hearing on 30 January. The respondents requested bank statements from RBS but advised that the statements received simply detailed an opening and closing balance. Those statements were not produced and therefore no further evidence was received from the respondents to challenge the applicants' evidence by reference to bank statements.

81. The Tribunal found the applicants' evidence, supported by bank statements, on the existence of the rent payments made and missed throughout the period of the rent account to be credible and reliable.

82. In summary, the respondents missed rental payments in July, August, September and October 2010 amounted to arrears of £3,380. There were subsequent payments by the respondents in the sum of £845 on 1 November 2010, £535 on 30 November 2010, £300 on 14 December 2010, £845 on 24 January 2011, 24 February 2011, and 1 April 2010. There were no further payments of rent until £845 on 30 June 2010 and 29 July 2010 by which point the arrears had increased to £5,080. There was a payment of £300 on 2 August 2011 reducing the arrears to £4,780. On 30 August 2011, 30 September 2011, 31 October 2011, 30 November 2011 the respondents paid £1,145 respectively, reducing the arrears to £4,425 as at 9 December 2012. Regular monthly payments of £845 were made on 30 December, 30 January ,

29 February and 30 March 2012 with arrears reducing to £3,580 as at 30 March 2012. A payment of £300 was paid on 2 April 2012 reducing the arrears to £3,280.

83. Thereafter, on the 9th of each month (the day on which rent was due to be paid) the arrears would increase to £4,125 and reduce to £3,280 following each monthly payment of £845 thereafter. That position continued throughout the rent account to the raising of these proceedings.

84. The notice of proceedings was served on 12 October 2018 at which point the arrears were £4,125.

85. The application to the tribunal was lodged on 2 November 2018 at which point the arrears had reverted to £3,280.

86. The applicant sought to increase the sum sought in the application prior to the CMD to £4,125. However, on the basis that the respondents paid £845 as their regular monthly payment on 2 January 2019 the arrears reverted back to £3,280 and the amendment was not moved by the applicants.

87. The further additional payments made by the respondents on 22 and 23 January respectively in the total sum of £1,645 thereby reduced the arrears to £1,635.

88. On 9 February the arrears reverted to £2,480. The respondents paid the applicants £845 on 11 February 2019 reducing the arrears to £1,635.

89. On 9 March 2019 the arrears reverted to £2,480. The respondents paid the applicants £845 on 11 March 2019 reducing the arrears to £1,635.

90. On 9 April the arrears reverted to £2,480. The respondents paid £845 on the same date, thereby reducing the arrears to £1,635. No information was before the Tribunal as to payments subsequent to 9 April 2019. In any event, the rent increased to £1,125 on 9 May 2019. The applicants made no application to amend the application to seek any payment in respect of a missed payment of rent on 9 May 2019.

91. The applicants having raised proceedings seeking payment of arrears in the sum of £3,280 and the respondents having made additional payments (i.e. payments over and above the monthly payments of £845) the arrears due to be paid by the respondents in terms of the application amount to £1,635.

92. In any event, at the hearing on 22 May 2019, the respondents accepted that there were unpaid rent arrears on the account as at both the date of the notice of proceedings and the date on which proceedings were commenced. In addition, the respondents made additional payments to the applicants on 22 and 23 January and at the hearing on 30 January 2019 the respondents accepted that there were rent arrears but disputed the level to be paid as he had received no demand for payment since 2012 until proceedings were

raised. Mr Gilchrist advised that if he the arrears had been brought to his attention he would have made payment.

93. That the applicants did not demand payment of the arrears accrued on the account between 2012 until proceedings were raised does not mean that those rent arrears are not lawfully due for payment. There was no evidence before the Tribunal in relation to the respondents withholding payment for any reason. In the decision dated 28 March the Tribunal decided that the arrears continued to carry through the rent account due to the application of Clayton's Principle.

94. That being the case, the rent arrears of £1,635 continued to be lawfully due for payment by the respondents, albeit that they first originated in 2010.

Ground 11

95. For ground 11 to be established on the facts, there need not be any rent due to be paid on the account as at the date of either raising the proceedings or at the date of the hearing. It is sufficient that the tenant had persistently delayed paying even one instalment of rent for a lengthy period (see A Stalker, Evidence, p 77). On the facts, the Tribunal considers that this ground is made out as there has been a persistent delay in the respondents paying off the rent arrears carrying through the account. In any event, the respondents accept that ground 12 is established on the facts and it is therefore unnecessary to consider ground 11 in any detail since the same consideration of reasonableness applies to both ground 11 and 12.

Ground 12

96. The respondents accepted that there was some rent lawfully due and unpaid on the date on which proceedings for recovery were begun and that they were in arrears as at the date of the service of the Notice of Proceedings.

97. However, the Tribunal cannot grant an order for possession unless the Tribunal is satisfied that it is reasonable to do so (section 18(4) of the 1988 Act).

Reasonableness

98. In considering whether or not it is reasonable for the Tribunal to grant the order for possession, the Tribunal has a wide discretion. The Act does not dictate the factors to be taken into account in assessing whether or not it is reasonable to grant the order (see A Stalker, Evictions in Scotland, p 174).

99. The Tribunal has taken into account the following factors in assessing whether or not it is reasonable to grant an order for possession.

100. The property has, during the period of the lease, become the respondents' long-term family home at which they now reside with their 8-

month old daughter. If an order for possession is granted, it will require the respondents to remove from the home at which they have resided for ten years.

101. While the Tribunal finds the respondents' evidence as to the fact they have not yet found alternative accommodation and the difficulties they have previously faced in sourcing alternative accommodation in light of their combined financial position to be credible and reliable, the Tribunal also balances that evidence with the fact that the respondents have not taken any real steps since the proceedings were raised to find alternative private rented accommodation. The Tribunal acknowledges that the respondents are on a waiting list for a council house but also takes into account that the respondents could have made further enquiries in relation to alternative accommodation. They are not in receipt of any benefits other than child benefit. Mr Gilchrist is in full-time employment and Ms. Foreman is on maternity leave following which she intends to return to part-time employment. The respondents are currently paying rent on a monthly basis. The Tribunal therefore considers that the respondents have an income sufficient to pay rent at an alternative property.

102. However, the Tribunal also takes into account that the applicants accepted that they had taken no steps between 2012 and the raising of these proceedings to recover the rent arrears on the account from the respondents. No annual statements were issued to the respondents. No demand letters were issued. While the Tribunal accepts that there were discussions with, and correspondence issued to, the respondents in relation to the arrears prior to 2012, the Tribunal places weight on the fact that the applicants allowed the respondents to continue to reside at the property from the date on which the rent arrears were first incurred in 2010 until these proceedings were raised. On the applicants' own evidence the respondents have made payments of rent totalling in excess of £97,000.

103. The Tribunal places little weight on the applicants' evidence that the rent was not increased during the period of the rent account until 9 May. It was open to the applicants to do so. It has little bearing on whether it is reasonable for the order for possession to be granted.

104. The applicants were candid with the Tribunal that the reason for them seeking repossession of the property was to enable them to sell the property to fund their daughter's further university education. That the applicants had desired to sell the property for some time was also supported by their evidence that they had attempted to remove the respondents from the property by the section 33 (short-assured tenancy) route in 2018, which had failed; and the evidence from the parties on 30 January relating to discussions between the parties in 2017 as to the possibility of the respondents buying the property.

105. The Tribunal takes into account that the applicants wish to seek possession of their property and that, on their evidence, they will be at a financial disadvantage if they are unable to do so. However, the Tribunal places little weight on this evidence in deciding whether it is reasonable to grant the order.

106. The Tribunal finds that the applicants' evidence as to their intentions and previous attempts at removing the respondents from the property weighs in favour of the respondents. While the applicants may have intended their purchase of the property to be a short-term investment, the reality of their situation is that they entered into an assured tenancy with the respondents. They provided the respondents with a certain degree of security of tenure, which the respondents have enjoyed for a period of nearly ten years. When the previous attempts at removing the respondents from the property failed, the applicants chose to raise proceedings on the basis of the rent arrears that had carried through the account since 2010/2011. While the Tribunal finds that those rent arrears are lawfully due to be paid, and the respondents accept that there are rent arrears lawfully due to be paid, the Tribunal does not consider that it is reasonable, taking into account all of the circumstances of the case and the factors outlined above to grant the order. That is particularly so given the level of arrears outstanding to be paid (£1,635) and the fact that they first originated in 2010.

107. The Tribunal has carefully considered and balanced all the circumstances of the case and finds that it is not reasonable to grant the order for possession.

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.

[redacted]

Legal Member/Chair

27/6/19

Date