



**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/19/1689**

**Re: Property at 84 Mansfield, East Calder, West Lothian, EH53 0JE (“the Property”)**

**Parties:**

**Mr Royce Kirk, c/o Elliot Estates, 1037 Sauchiehall Street, Glasgow G3 7TZ (“the Applicant”)**

**Mr Tony Hills, Mrs Katrina Hills, 84 Mansfield, East Calder, West Lothian, EH53 0JE (“the Respondents”)**

**Tribunal Member:**

**Adrian Stalker (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined:**

**(1) That ground 8 of schedule 5 to the Housing (Scotland) Act 1988 (“the Act”) is established;**

**(2) That ground 11 is also established, and it is reasonable to grant an order;**

**therefore the Tribunal granted an order for possession of the Property in favour of the Applicant, under section 18(3) and (4) of the Act.**

**Background**

1. On or about 27 May 2016, the Applicant let the property to the Respondents, under a short assured tenancy. The parties entered into a written tenancy agreement.

2. By an application made under rule 66 of the schedule to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Procedure Rules”) dated 3 June 2019, the Applicant sought an order for recovery of possession under section 33 of the 1988 Act.

3. On 16 October, a Case Management Discussion (“CMD”) was conducted by a Legal Member, Karen Kirk. The Applicant was represented by Gary Kavanagh, of Elliott Estates, 1037 Sauchiehall Street, Glasgow. The respondents were not present, or represented, at that hearing. Reference is made to the Legal Member’s decision, dated 31 October 2019. She considered that the notice to quit served by the Applicant was invalid, for the reasons that she states. However, she also noted that, at the same time as serving the notice to quit, and a notice under section 33(1)(d) of the Act, the landlord had also served an AT6, advising the respondents that proceedings would be raised under section 18 of the Act, seeking recovery of possession on grounds 8 and 11 of schedule 5 to the Act. In the circumstances, the Legal Member acceded to a request from Mr Kavanagh to allow the application to be amended to an application under rule 65, for an order for possession under section 18 of the Act. However, she continued the CMD to allow that amendment to be intimated to the respondents.

4. It is convenient also to note the following points:

- The Applicant has lodged a copy of the parties’ tenancy agreement. Under that agreement, the rent payable is £600 every calendar month.
- Clause 7 of the agreement makes provision for the tenancy to be brought to an end under grounds 8 and 11. Accordingly, the requirements of section 18(6) of the Act are met. This means that the Tribunal may grant an order under section 18, even if the parties’ agreement has never been brought to an end by a notice to quit, and is: “for the time being let on an assured tenancy, not being a statutory assured tenancy”
- On being requested to do so by the Tribunal, the Applicant’s agents have produced a Certificate of Intimation from Sheriff Officers, confirming that the AT6 was served on both Respondents on 25 January 2019.
- The Applicant’s agents have also produced a rent statement showing total arrears of £7,900, as at 27 October 2019. That statement indicates that no rental payments have been made since the end of November 2018.
- A copy of the notice to the local authority (under section 19A of the Act), has also been produced.
- A copy of the Legal Member’s decision was sent to the Respondents on 1 November, giving them intimation of the amended.

The continued CMD

5. The continued CMD took place at 2 pm on 17 December 2019, at Riverside House, 502 Gorgie Road, Edinburgh. Mr Kavanagh again attended on behalf of the Applicant. The Respondents did not appear, and were not represented. The Tribunal had sight of a certificate of intimation from Sheriff Officers, confirming that intimation for the continued CMD was given to the Respondents, on 18 November.

6. The Tribunal was satisfied that the AT6 and the section 19A notice were in order.

7. Mr Kavanagh advised the Tribunal that no payments of rent have been made since the last rental statement was produced. The current arrears stand at £8,500. He produced another statement confirming that amount.

8. In light of the documents produced, and in the absence of any representation by the Respondents to the contrary, the Tribunal was satisfied that:

- Both at the date of the service of the notice under section 19 and at the date of the continued CMD, at least three months' rent lawfully due from the Respondents is in arrears.
- The Respondents have persistently delayed paying rent which has become lawfully due.

9. Accordingly grounds 8 of schedule 5 of the Act is established. As regards ground 11, the Tribunal considered that it was reasonable to grant the order, given: (a) the high level of arrears; (b) the fact no payments have been made for over a year.

### Decision

10. The Tribunal accordingly granted an order for possession under section 18(3) and (4) of the Housing (Scotland) Act 1988.

### **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.**

A.Stalker

\_\_\_\_\_  
Legal Member/Chair

\_\_\_\_\_  
Date

17 / 12 / 19