

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**

Chamber Ref: FTS/HPC/EV/18/0918

**Re: Property at 4 Park Avenue, Top Right Flat, Dundee, DD4 6PW (“the
Property”)**

Parties:

**Area Estates Limited (Previously Flats 4 U Limited), c/o Pavillion Properties, 86
Bell Street, Dundee, DD1 1HN (“the Applicant”)**

**Mr Gerald Malone, 4 Park Avenue, Top Right Flat, Dundee, DD4 6PW (“the
Respondent”)**

Tribunal Members:

Valerie Bremner (Legal Member) and Melanie Booth (Ordinary Member)

Decision (in absence of the Respondent)

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

This is an Application for a possession order in terms of s18 of the Housing (Scotland) Act 1988 in terms of Grounds 8 and 11 of Schedule 5 of the Act and accordingly is considered in terms of Rule 65 of the Tribunal Rules and not Rule 66. The Applicant did not attend the hearing but was represented by Mr Stephen Forsyth of Muir Myles Laverty Solicitors, Dundee. The Respondent did not attend but the Tribunal had sight of the execution of service by Sheriff Officers of the application, accompanying papers and the date of the Hearing. Mr Forsyth moved to proceed in the absence of the Respondent in terms of the Tribunal Rules and this was granted.

The Tribunal had sight of the tenancy agreement, the AT6, a Notice in terms of the Homelessness etc (Scotland) Act 2003, a Notice to Quit, rent arrears statement and an execution of service of the Notice to Quit and AT6 by Sheriff Officers. The Tribunal noted that the AT6 was in proper form and both that document and the Notice to Quit had been properly and timeously served on the Respondent.

The Discussion at the Hearing

The Tribunal noted that the Notice to Quit in this case appeared not to be valid as it did not contain all of the information required within The Assured Tenancies (Notice To Quit Prescribed Information) (Scotland) Regulations 1988. After discussion this was accepted by Mr Forsyth but on behalf of the applicant representations were made to the effect that this had no bearing on the issue of the application in terms of s18 of the 1988 Act as such an application relates to breach of a lease due to specified grounds rather than termination of a lease due to it reaching its term or end. The Tribunal considered the case of Royal Bank of Scotland V Boyle 1999 Hous.L.R.43. and the view of the Sheriff in that case to the effect that such a notice was not required to be served in an application of this type provided the terms of Section 18(6) of the 1988 Act are otherwise satisfied. The Tribunal accepted in the light of this case that the Service of the Notice to Quit was not required.

The Tribunal was advised that the Respondent had not paid rent since August 2017 and had only paid £480 of rent since the lease commenced.

Findings in Fact

The Tribunal found that this was a contractual assured tenancy in which the rent per calendar month was £325, and the agreement had continued by tacit relocation.

The Respondent had been served with a valid AT6 on 29th March giving him notice to vacate as of 14th April 2018.

The Grounds under Schedule 5 of the 1988 Act are narrated within the tenancy agreement including Grounds 8 and 11 upon which the application is made. The Tribunal found that the Respondent had not paid rent since August 2017 and that the sum of £2669.38 remains outstanding as of the date of the application.

The Tribunal found having heard representations on behalf of the Applicant that the Respondent was not believed to be in receipt of or entitled to Housing Benefit or Universal Credit during the tenancy agreement.

The Tribunal found in fact that the Respondent was in arrears of at least three months' rent as the date of service of the AT6 and the date of the Hearing and that the Respondent had persistently delayed paying rent.

Reasons for Decision

The Tribunal was satisfied that the terms of s18(6) of the Housing (Scotland) Act 1998 were met and that Grounds 8 and 11 of Schedule 5 of the Act were established by the Applicant.

Decision

The Tribunal granted a possession order for the property at 4 Park Avenue Top Right Flat Dundee DD4 6PW in favour of the Applicant Area Estates Limited.

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.

VALERIE BREMNER

Legal Member/Chair

Date 3/8/18