



**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/19/0313

Re: Property at 9 Meagher Court, Cumnock, KA18 1NA (“the Property”)

Parties:

**Mr Sacha Sepehr, 35 Arthur Court, Charlotte Despard Avenue, London, SW11
5JA (“the Applicant”)**

**Mr James McClusky, formerly residing at 9 Meagher Court, Cumnock, KA18
1NA, and whose current address is unknown (“the Respondent”)**

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondent)

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

Background

This is an application dated 29th January 2019 brought in terms of Rule 65 (Application for order for possession in relation to assured tenancies) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant provided with his application copies of the short assured tenancy agreement, section 19 notice (form AT6), Section 11 notice, rent arrears statement and relevant execution of service.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The form AT6 intimated to the tenant that the landlord intended to raise proceedings for possession of the house on ground 8 of Schedule 5 to the *Housing (Scotland) Act 1988*.

The Respondent had been validly served by advertisement in terms of Rule 6A (Service by advertisement) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Case Management Discussion notification letter dated 13th April 2019 containing details of the Case Management Discussion today was advertised on the Tribunal website between 15th April and 17th May 2019, and I was provided with a certificate from the Scottish Courts and Tribunals Service confirming these details.

Case Management Discussion

A Case Management Discussion was held on 20th May 2019 at Russell House, King Street, Ayr. The Applicant did not appear, but was represented by Mrs McQueen, letting agent. The Respondent did not appear, nor was he represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

I was invited by Mrs McQueen with reference to the application and papers to grant the order sought on ground 8 of Schedule 5 to the *Housing (Scotland) Act 1988*. The rent arrears statement provided indicates that as at the date of the form AT6 of 7th January 2019, the rent arrears totalled £2,550.08, being the unpaid rentals for the preceding six months plus half of the monthly rent which remained unpaid from an earlier period.

Mrs McQueen confirmed that this amount remained outstanding and unpaid. The monthly rent for the property in terms of clause 5 of the short assured tenancy agreement is £425.00, albeit that Mrs McQueen advised that the Applicant was in fact only charging a monthly rental of £392.23 for the period in question. The outstanding rent arrears amount to substantially in excess of 3 months' rent.

Statement of Reasons

In terms of Section 18(3) of the *Housing (Scotland) Act 1988* ("the Act"), if the Tribunal is satisfied that any of the grounds in Part I of Schedule 5 to the Act is established then, subject to subsections (3A) and (6), the Tribunal shall make an order for possession.

Section 18(3A) of the Act provides that if the First-tier Tribunal is satisfied (a) that Ground 8 in Part I of Schedule 5 to this Act is established; and (b) that rent is in arrears as mentioned in that Ground 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.

Section 18(6) of the Act provides that the First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless (a) the ground for possession is Ground 2 or Ground 8 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9, Ground 10, Ground 15 or Ground 17; and (b) the terms of the tenancy make provision for it to be brought to an end on the ground in question.

The Tribunal is satisfied that ground 8 contained in Part 1 of Schedule 5 to the Act has been established. The Tribunal has not been satisfied that rent is in arrears as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit. There has been no evidence to establish any such reason for rent arrears. The terms of the short assured tenancy agreement make provision for it to be brought to an end on the ground in question.

For the above reasons, the Tribunal shall make an order for possession.

Decision

In these circumstances, I will make an order for possession of the house let on the tenancy as sought in this application.

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.

N Kinnear

20/05/19

Legal Member/Chair

Date