

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/19/0629

**Re: Property at Gilroy House, 6 Scrimgeour Place, Regents Gardens, Dundee,
DD3 6TU (“the Property”)**

Parties:

**Mr Mohammed Mselli, Mrs Joyce Mselli, 45 Valleyfield Road, Streatham,
London; 5 East Queen Street, Newport on Tay, Fife, DD6 8AY (“the
Applicants”)**

**Mrs Shona Fletcher, Gilroy House, 6 Scrimgeour Place, Regents Gardens,
Dundee, DD3 6TU (“the Respondent”)**

Tribunal Members:

Lynsey MacDonald (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the order for eviction is granted.**

1. Background

- 1.1. The Applicants sought an order for eviction on the grounds of rent arrears. An application in terms of Rule 66 (Short Assured Tenancies) was received by the Tribunal on 25th February 2019.
- 1.2. The Applicants lodged a copy of the tenancy agreement, a Notice to Quit, an AT5 form, an AT6 form, a s.11 notice, and a statement of rent arrears. The Applicants subsequently lodged confirmation from Dundee City Council that the Respondent was not entitled to further Housing Benefit payments, and proof of service for the AT5, AT6 and Notice to Quit.

- 1.3. Prior to acceptance of the application, the Applicants amended the application to confirm that the application was in terms of Rule 65 (Assured Tenancies).
- 1.4. The Tribunal fixed a Case Management Discussion for 19th June 2019, and this was intimated to parties. The Respondent was served with the letter informing her of the date fixed, together with the aforementioned documents, by Sheriff Officer. The Respondent was advised that written representations in response to the application were to be lodged by 31st May 2019. The Respondent was also told that she required to attend the Case Management Discussion today, and was informed that the Tribunal could today make any decision on the application that could be made at the full Hearing, if the Tribunal had sufficient information and considered that the procedure had been fair.

2. The Case Management Discussion

- 2.1. The First Applicant was unable to attend the Case Management Discussion. The Second Applicant attended the Case Management Discussion, and represented both Applicants. She was accompanied by her friend, Val Gauld, who was her support person.
- 2.2. By 1000 hours, the Respondent had failed to attend at the venue. The Tribunal delayed in calling the Case Management Discussion, in order to allow extra time for the Respondent to attend, in the event that the Respondent was running late. The Respondent failed to attend the Case Management Discussion.
- 2.3. The Applicant invited the Tribunal to proceed in the absence of the Respondent, and to grant the order. The Clerk had earlier confirmed that the Respondent had not been in contact with the Tribunal, and in particular written representations had not been received. The Tribunal was satisfied that the Respondent was aware of the Case Management Discussion, had wilfully failed to attend, and that it was fair to proceed in her absence.
- 2.4. The Second Applicant lodged an up to date rent statement, confirming that the rent arrears are currently £8,444.55.
- 2.5. The Tribunal proceeded on the basis of the written documents which had previously been lodged, together with submissions from the Second Applicant.

3. Findings in Fact

- 3.1. The Applicants entered into a short assured tenancy agreement on 1st March 2012. The end date for the tenancy was 28th February 2013 and allowed for monthly renewal.

- 3.2. The first rent payable under the tenancy agreement was £780 per month in advance, with subsequent rent payments of £720 four-weekly. The rent was later increased to £756.28 four-weekly.
- 3.3. Until 19th August 2018, the rent was paid in full, apart from the sum of £375.47. Between 20th August 2018 and 19th June 2019 the Respondent paid only £250 to the Applicants in respect of rent.
- 3.4. On 14th December 2018 the Applicants served, by recorded delivery, form AT5, form AT6, and a Notice to Quit, indicating that possession of the property was required on 29th December 2018.
- 3.5. The Respondent did not vacate the property.
- 3.6. On 14th December 2018, the rent arrears were £3,906.87.
- 3.7. On 19th June 2019 the rent arrears were £8,444.55.

4. Reasons for Decision

- 4.1. There was nothing before the Tribunal challenging or disputing any of the evidence before it.
- 4.2. Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act") provides *inter alia* that:
 - (1) *The First-tier Tribunal shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this act.*
 - (3) *If the First-tier Tribunal is satisfied that any of the grounds in Part 1 of Schedule 5 to this Act is established then, subject to subsections (3A) and (6) below, the Tribunal shall make an order for possession.*
 - (3A) *If the First-tier Tribunal is satisfied:*
 - (a) *That Ground 8 in Part 1 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.*
- 4.3. Schedule 5, Ground 8 of the 1988 Act provides that, "Both at the date of the service of the notice under section 19 of this Act relating to the proceedings for possession and at the date of the hearing or the date

of the case management discussion, whichever is the earlier, at least three months rent lawfully due from the tenant is in arrears.”

- 4.4. The Tribunal accepts that the Respondent is liable to pay rent to the Applicant under the terms of the tenancy agreement.
- 4.5. Under the tenancy agreement one month's rent is £819.30 (being one twelfth of the annual sum due). Three months' rent is £2,457.91 (being three twelfths of the annual sum due).
- 4.6. On both 14th December 2018 and 19th June 2019, the rent arrears were greater than three months' rent.
- 4.7. Accordingly, the Tribunal accepts that the grounds were met, and the Tribunal was required to grant the order.

5. Decision

The mandatory grounds for eviction having been met, the order for eviction is granted.

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.

L MacDonald

Legal Member

19/06/19.

Date