



**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/19/0259

Re: Property at 320 (1F1) Leith Walk, Edinburgh, EH6 5BU (“the Property”)

Parties:

Ms Hirzah Mohsin, 11 Palmerston Road, London, E7 8BH (“the Applicant”)

**Mr Mohammed Ayaz, Mrs Humira Ayaz, 320 (1F1) Leith Walk, Edinburgh, EH6
5BU (“the Respondents”)**

Tribunal Members:

Neil Kinnear (Legal Member) and Linda Reid (Ordinary Member)

Decision

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

Background

This is an application dated 23rd 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 her application copies of an unsigned short assured tenancy agreement, notice to quit, section 19 notice (form AT6), Section 11 notice, rent arrears statement and relevant executions 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 Applicant intended to raise proceedings for possession of the house on grounds 8, 11 and 12 of Schedule 5 to the *Housing (Scotland) Act 1988*.

A Case Management Discussion was held on 12th April 2019 at George House, 126 George Street, Edinburgh. The Applicant did not appear, but was represented by Miss Caldwell, solicitor. The First Respondent appeared, with his daughter as supporter. He also appeared on behalf of his wife, the Second Respondent.

The Tribunal identified a number of factual disputes between the parties, and set a Hearing.

Hearing

A Hearing was held on 27th June 2019 at George House, 126 George Street, Edinburgh. The Applicant did not appear, but was represented by Ms Mullen, solicitor. The Respondents did not appear, but were represented by Ms Shaw, solicitor.

Ms Mullen and Ms Shaw advised the Tribunal that the parties had now reached an agreement, and they tendered to the Tribunal a copy Minute of Agreement between the parties.

The Tribunal was invited by Ms Mullen and Ms Shaw with reference to the application and papers to grant the order sought on grounds 8, 11 and 12 of Schedule 5 to the *Housing (Scotland) Act 1988*. The Respondents accept that they are in arrears of rent for a period in excess of 3 months, and they consent to the granting of an order for possession.

The Tribunal noted an undertaking given in terms of the Minute of Agreement by the Respondents that they will vacate the Property by 12 noon on 11th September 2019 and then immediately return all sets of keys for the Property to the Applicant's solicitors. In turn, the Applicant gave an undertaking in terms of the Minute of Agreement that she will not enforce the order for possession before 12 noon on 11th September 2019 and that she will not be entitled to instruct sheriff officers to remove the Respondents before that date.

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.

In terms of Section 18(4) of the Act, if the Tribunal is satisfied that any of the grounds in Part II of Schedule 5 to this Act is established, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

Section 18(4A) of the Act provides that in considering for the purposes of subsection (4) above whether it is reasonable to make an order for possession on Ground 11 or 12 in Part II of Schedule 5 to this Act, the First-tier Tribunal shall have regard, in particular, to the extent to which any delay or failure to pay rent taken into account by the Tribunal in determining that the Ground is established is or was a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit.

The Tribunal is satisfied that grounds 11 and 12 contained in Part 2 of Schedule 5 to the Act have been established, and considers that it is reasonable to make an order for possession. 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.

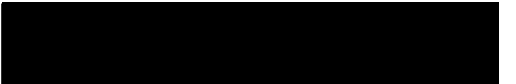
For the above reasons, and with the consent of the parties, the Tribunal shall make an order for possession.

Decision

In these circumstances, the Tribunal 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.



Legal Member/Chair

27/06/19

Date