

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/22/2221**

**Re: Property at 146 Muirhouse Avenue, Motherwell, ML1 2LB (“the Property”)**

**Parties:**

**Mr Darren Miller, Police House, Dalmally, Argyll (“the Applicant”)**

**Ms Karen Small, 146 Muirhouse Avenue, Motherwell, ML1 2LB (“the Respondent”)**

**Tribunal Member:**

**Karen Kirk (Legal Member) and Elizabeth Williams (Ordinary Member)**

1. This Hearing was a Case Management Discussion (hereinafter referred to as a “CMD”) fixed in terms of Rule 65 and concerned an Application for an Order for possession under the Housing (Scotland) Act 1988. The purpose of the hearing being to explore how the parties dispute may be efficiently resolved. The purpose of the hearing was explained and it was understood a final decision could also be made.

**2. Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Order for Repossession against the Respondent.**

**3. Attendance and Representation**

The Applicant was not in attendance. He was represented by John McKeown, Trainee Solicitor, Jackson Boyd Solicitors.

The Respondent was not present. She was present on the last occasion and had been intimated this new date by email on 7<sup>th</sup> December 2022.

#### **4. Preliminary Matters.**

The Respondent on the day before the CMD sent in to the Tribunal an email advising she was not able to attend and had not had intimation. The Tribunal was satisfied that the CMD could proceed.

The Applicant's representative had lodged an up to date rent statement and this had been sent to the respondents.

There were no other preliminary matters raised.

#### **5. Case Management Discussion**

The Applicant's representative confirmed that the most recent contact between parties was recent correspondence the Respondent had with the letting agency. The Respondent indicated she would be moving out the property and was in the process of same. The letting agent asked for date whereby the property would be vacated and the Respondent failed to respond.

The Applicant's representative submitted that he sought an order for eviction. He submitted that the circumstances of the case were that the Applicant was not a commercial landlord and he had never intended to rent the property. He used to live in the property and required to move to move due to his employment. He was unable to sell the property and rented it out. The applicant served notice which was invalid initially and the Respondent stopped making payment towards the rent he submitted. Following a correct notice this application was raised. The Applicant seeks to sell the property.

The Applicant's representative went on to submit that rent arrears have continued to accrue and a sale for the property had since fallen through. The Applicant's representation said that since the continuation of the CMD in November 2022 there had been about her new accommodation but she has failed to engage meaningfully by providing a date to leave the property, by not making payments to the rent and by not having a representative from CAB attend on her behalf.

The Applicant's representative said it was reasonable to grant an order. The Applicant seeks to sell the property, the Respondent had another property and the Applicant has been liable for the ongoing mortgage payment on the property whilst rent arrears have accrued.

#### **6. Respondent's Position**

Whilst the Respondent was not present she had attended the last CMD in November 2022. The Respondent explained on that occasion that she had accepted an offer of a new tenancy with North Lanarkshire Council for her and her two daughters to reside. The tenancy required white goods and floor coverings before she could reside there. She sought time for further advice and representation but also time to move into the new property.

The Tribunal had provided the Respondent with time and another CMD in the interests of justice to allow her time to obtain representation. The Respondent also indicated that she would terminate the tenancy once her new tenancy could be occupied. The Respondent did not attend the CMD.

## **7. Reasons for Decision and Findings in Fact**

- 1. The Tribunal was satisfied that a decision could be made in the absence of the Respondent at the Hearing and to do so would be in the interests of the parties, in the interests of justice and having regard to the Overriding objective. The Respondent had been served personally by Sheriff Officer, had attended the Hearing on the 21<sup>st</sup> November 2022 and had received intimation by email of this Hearing on 7<sup>th</sup> December 2022. Prior to the Hearing on 18<sup>th</sup> January 2023 she intimated she would not be attending and had not received notification of the Hearing. The Tribunal was satisfied the Respondent was aware of the Hearing.**
- 2. The Applicant sought an Order for Repossession and Eviction of the Applicant in terms of Section 18 of the 1988 Act.**
- 3. The Tribunal had regard to the modification of the 1988 Act by the Coronavirus Recovery and Reform Act 2022 and the fact the Tribunal had discretion and further the Tribunal had to have regard to the extent the Applicant had complied with the pre-action protocol specified by the Scottish Ministers in the regulations.**
- 4. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property as a copy title was lodged with the Application.**
- 5. There was a Short Assured Tenancy in place between parties dated 20<sup>th</sup> July 2016.**
- 6. A Notice to Leave was sent to the Respondent on 21<sup>st</sup> June 2022. The Applicant has sent pre action requirement correspondence to the Respondent and a copy of same was lodged.**
- 7. A Section 11 Notice under the Homelessness etc, (Scotland) Act 2003 was served on the Local Authority dated 6<sup>th</sup> July 2022.**
- 8. Notice under Section 19 of the Housing (Scotland) Act 1988 was served on the Respondent dated 10<sup>th</sup> June 2022 and proof of service lodged.**
- 9. The Tribunal was satisfied on balance that the Respondent was in terms of Schedule 5, Grounds 8,11 and 12 of the 1988 Act in arrears of rent both at the date of the CMD and of Notice under Section 19 of the 1988 Act of at least 3 months rent lawfully due. The Respondent in addition has persistently delayed in paying rent in terms of Ground 11 and that rent in terms of Ground 12 is unpaid to the Applicant on the date upon which the Proceedings begun.**

10. As at the date of the hearing the rent arrears for the property due by the Respondent amounted to £7270 as at December 2022. Monthly contractual rent is £550. The Respondent had not made payment towards rent for some months.
11. Further the Tribunal was satisfied on a balance of probabilities that the said arrears were not wholly or partly due to delay or failure of payment of the relevant benefit.
12. The Tribunal found that the requirements of Grounds 8, 11 and 12 of Schedule 3 to the Act had been met.
13. Further the Tribunal was satisfied that the rent arrears were of a substantial nature. No payment to rent had been received since July/August 2022.
14. On the evidence available to the Tribunal the Respondent had accepted another tenancy on or before November 2022 and had confirmed this to the Tribunal orally at the last CMD. The Applicant's representatives had lodged numerous letters and correspondence showing compliance with the Pre-Action Protocol. The Applicant was not a professional landlord, was requiring to meet mortgage payments on the property without rent payments and sought to sell the property. The Tribunal found an Order was reasonable in terms of the Coronavirus (Scotland) Act 2020.
15. Accordingly, the Tribunal granted an order for Repossession against the Respondents.

### **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.

19<sup>th</sup> January 2023

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