



**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/22/0970**

**Re: Property at 1B Arranview Court, Ayr, KA8 9BB (“the Property”)**

**Parties:**

**Kyle Estate Ltd, Dalblair House, 46 Dalblair Road, Ayr, KA7 1UQ (“the Applicant”)**

**Mr Christopher Thomas McCreadie, 1B Arranview Court, Ayr, KA8 9BB (“the Respondent”)**

**Tribunal Member:**

**Karen Kirk (Legal Member) and Angus Lamont (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an order against the Respondent for possession of the Property under section 18 of the Housing (Scotland) Act 1988.**

**Attendance**

Stephen Nicolson, Harper Macleod LLP, 45 Gordon Street, Glasgow attended for the Applicant.

The Respondent was not in attendance.

**Introduction to Decision**

This Hearing was a Case Management Discussion fixed in terms of Rule 17 of the Procedure Rules and concerned an application for repossession of a Short Assured Tenancy at 1B Arranview Court, Ayr, KA8 9BB. 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 on the Application could also be made.

### **Preliminary Matters**

The Respondent was not in attendance. Since the last CMD the Applicant had arranged access to the property for the purpose of fitting a fire alarm. The Applicant's representative said that during that process the position of the Respondent was sought. The Applicant's representative said he has been in active contact with the Respondent's representatives, 1<sup>st</sup> Legal. He had emailed the solicitors and chased this up. Yesterday he was informed that the Respondent was not opposing the application and was content for an order to be granted against him. The Applicant's representative told the Tribunal the time and date of that email and narrated the details.

No further representations had been lodged by the Respondent or his representative.

The Tribunal discussed with the Applicant's representative that since the last CMD he had lodged on behalf of the Applicant information regarding the other properties owned in the building by the Applicant.

There were no other preliminary matters.

### **Background**

Prior to the first CMD in this Application the Respondent had lodged a statement from his grandmother and a GP letter. He had recently instructed solicitors. The Tribunal noted the Respondent's solicitor had written to the Tribunal seeking the postpone that CMD for legal aid and also because of non-availability.

The Applicant had opposed the postponement and had lodged written opposition to this providing reasons for the applicant. The Tribunal determined that a further CMD be fixed to allow the Respondent time to obtain representation and for both parties to lodge if so mind further information relevant to the reasonableness.

### **Case Management Discussion**

The Applicant's representative submitted that the Applicant sought an order for recovery of possession of the property. He submitted further that he sought same under section 18(1) of the 1988 Act, based on Grounds 8 and 12 of Schedule 5 of this Act. The Tribunal noted that a rent statement had been lodged. The Applicant's representative submitted that the with reference to the recent email he had lodged the Applicant was seeking to recover possession in order to carry out renovations to the building. The Applicant cannot continue to renovate without vacant possession. The Applicant's representative submitted that the Applicant was not receiving rental income from the other properties whilst he sought vacant possession and further was requiring to pay council tax on the other 4 properties which were empty. The rent arrears had not been met and an order was required.

The Tribunal noted that in terms of the rent statement lodged the Respondent was more than 3 months in rent arrears due both at the date of service and at this CMD. The AT6 and execution of service having been carried out timeously. The Applicant's representative further confirmed he sought that the Tribunal grant the Order on the basis that Grounds 8 was established. The rent due amounted to as at March 2022 was £1904.52. Rent payable per month was she submitted £425.

### **Findings in Fact/Reasons for Decision**

- 1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and that to do so would not be contrary to the interests of the parties having regard to the Overriding objective. The Respondent had been present at the last CMD and had received notification of these proceedings. He had not submitted any further written representations, attended the CMD and his representative had indicated he was content for an Order to be granted. He had previously attended the first CMD. He was aware of the issues in the Application.**
- 2. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property.**
- 3. The Tribunal was satisfied that the tenancy was in terms of the 1988 Act, an assured tenancy dated 14<sup>th</sup> October 2016. Rent per calendar month was £425.**
- 4. The Applicants were relying on Ground 8 under Schedule 5 of the 1988 Act only to make the Application.**
- 5. In terms of Section 18 (3A) the Tribunal was satisfied that the respondents were in arrears of rent lawfully due of as at the date of the relevant and valid notice on 8<sup>th</sup> September 2021 and at the date of the hearing and that these rent arrears comprised of more than 3 months rent.**
- 6. The relevant AT6 notice was valid and had been served and received by the Respondent on the 8<sup>th</sup> September 2021.**
- 7. Notice to the Local Authority had been given.**
- 8. A full Rent Statement for the property was lodged. Rent owed from same amounted to £1904.52 as at 29<sup>th</sup> March 2022. The Tribunal found this established that more than 3 months rent was in arrears both at the date on which the notice of intention to seek possession of the house was served and at the date of the hearing.**
- 9. The Respondent had lodged a letter from his grandmother saying he was looking for council accommodation and a to whom it may concern letter from his GP dated 9<sup>th</sup> June 2022 confirming he had unspecified mental ill health and required stability.**
- 10. The Applicant sought vacant possession on the grounds stated as they own a number of flats and require vacant possession to carry out renovation work. The remaining 4 properties are empty and incurring costs without rental income to allow renovation. Renovation cannot continue without the property in this application becoming vacant.**
- 11. The Tribunal considered that it was reasonable for an order for repossession be granted in all the circumstances. The Tribunal had regard to the fact that the Applicant had vacant properties the earliest being in 2019 without rental income to allow completion of renovation. This could not be done until this property was vacant. The Ground being**

established the Respondent was also in continuing rent arrears. The Tribunal had regard to the Respondent's unspecified mental ill health. The Tribunal had given further opportunity in continuing to a new CMD to the Respondent to obtain representation and to lodge further medical information. The Respondent did not attend and his representative had confirmed that he was content for an Order to be granted. No further representations had been lodged. In all these circumstances the Tribunal considered an order was reasonable.

12. Accordingly in terms of Section 18 of the 1988 Act the Tribunal granted an Order against the Respondent for possession of the Property.

### 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.

# K Kirk

07/09/22

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Legal Member/Chair

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Date