



**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 and Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber Regulations 2017.**

**Chamber Ref: FTS/HPC/EV/20/0541**

**Re: Property at Renwick Cottage, 28 George Street, Dunoon, PA23 8BW (“the Property”)**

**Parties:**

**Mr James Antony Black, 17 Victoria Road, Hunters Quay, Dunoon, PA23 9JY (“the Applicant”)**

**Mr Gordon Stewart Campbell, Renwick Cottage, 28 George Street, Dunoon, PA23 8BW (“the Respondent”)**

**Tribunal Member:**

**Martin McAllister (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession of the Property be granted in favour of the Applicant**

**Background**

**This is an application for eviction under Section 18 of the Housing (Scotland) Act 1988. (the 1988 Act). It is dated 7<sup>th</sup> February 2020. The Applicant seeks to rely on Ground 8 of Part I of Schedule 5 of the 1988 Act- that there are rent arrears of at least three months.**

**The Tribunal had regard to the following documents before it:**

- 1. The application.**
- 2. Copy short assured tenancy agreement dated 22<sup>nd</sup> November 2014.**

3. Copy AT5 form dated 10<sup>th</sup> November 2014.
4. Copy Notice to Quit dated 4<sup>th</sup> December 2019.
5. Copy AT6 form.
6. Rent statement showing accrued rent arrears of £4,870 as at 24<sup>th</sup> January 2020.
7. Certificate of Citation dated 30<sup>th</sup> July 2020 in respect of service of intimation of the case management discussion.
8. Copy notice to the relevant local authority dated 7<sup>th</sup> February 2020 under Section 11 of the Homeless etc. (Scotland) 2003

### **The Case Management Discussion**

A case management discussion was held on 20<sup>th</sup> August 2020 and was held by audio conference because of the public health crisis. There was no appearance by the respondent. Mr Ranalli, solicitor, appeared on behalf of the Applicant. He said that, since the application had been lodged, the level of arrears had increased to £6,120 and that the most recent payment by the Respondent was for £150 and was made in February 2020. He said that he was seeking an order of possession because of rent arrears. He said that the rent statement submitted with the application showed arrears of £4,330 as at 4<sup>th</sup> February 2020 which was the date of service of the notice under Section 19 of the 2011 Act.

### **The Law**

#### **Section 18 of the Housing (Scotland) Act 1988**

##### ***Orders for possession.***

***(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.***

***(2) The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.***

***(3) If the First-tier Tribunal is satisfied that any of the grounds in Part I 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 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.***

***(3B) Subsection (3C) applies where the First-tier Tribunal is satisfied—***

***(a) that Ground 8 in schedule 5 is established, and***

***(b) that all or part of the rent in respect of which the tenant is in arrears as mentioned in that Ground relates to the period during which paragraph 4 of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020 is in force.***

***(3C) Where this subsection applies, in considering for the purposes of subsection (4) (as applied in accordance with the modification made by paragraph 3(2)(b) of schedule 1 of the Coronavirus (Scotland) Act 2020) whether it is reasonable to make an order for possession against the tenant, the First-tier Tribunal is to consider the extent to which the landlord has complied with pre-action requirements before raising the proceedings for possession.***

***(4) If the First-tier Tribunal is satisfied that any of the grounds in Part I or 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.***

***(4A) In considering for the purposes of subsection (4) above whether it is reasonable to make an order for possession on Ground 8 in Part I of Schedule 5 to this Act or 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.***

***(5) Part III of Schedule 5 to this Act shall have effect for supplementing Ground 9 in that Schedule and Part IV of that Schedule shall have effect in relation to notices given as mentioned in Grounds 1 to 5 of that Schedule.***

***(6) 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.**

**(6A) Nothing in subsection (6) above affects the First-tier Tribunal's power to 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, where the ground for possession is Ground 15 in Part II of Schedule 5 to this Act.**

**(7) Subject to the preceding provisions of this section, the First-tier Tribunal may make an order for possession of a house on grounds relating to a contractual tenancy which has been terminated; and where an order is made in such circumstances, any statutory assured tenancy which has arisen on that termination shall, without any notice, end on the day on which the order takes effect.**

**(8) In subsections (3A) and (4A) above—**

**(a) “relevant housing benefit” means—**

**(i) any rent allowance or rent rebate to which the tenant was entitled in respect of the rent under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971); or**

**(ii) any payment on account of any such entitlement awarded under Regulation 91 of those Regulations;**

**(aa) “relevant universal credit” means universal credit to which the tenant was entitled which includes an amount under section 11 of the Welfare Reform Act 2012 in respect of the rent;**

**(b) references to delay or failure in the payment of relevant housing benefit or relevant universal credit do not include such delay or failure so far as referable to any act or omission of the tenant.**

**(9) In subsection (3C), “pre-action requirements” means such requirements as the Scottish Ministers may specify in regulations.**

**(10) Regulations under subsection (9) may in particular make provision about—**

***(a) information to be provided by a landlord to a tenant including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy,***

***(b) steps to be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,***

***(c) such other matters as the Scottish Ministers consider appropriate.***

***(11) Regulations under subsection (9) are subject to the affirmative procedure.***

**Ground 8, Part I of Schedule 5 of The Housing (Scotland) Act 1988.**

***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.***

### **Findings in Fact and Law**

- 1. The Applicant and Respondent were parties to a short assured tenancy in respect of the Property.**
- 2. The monthly rent payable by the Respondent was £350.**
- 3. The arrears of rent due as at 4<sup>th</sup> December 2019 was £4,330.**
- 4. The arrears of rent lawfully due as at 20<sup>th</sup> August 2020 is £6,120.**
- 5. The Notice to Quit and AT6 form were properly served on the Respondent.**
- 6. The Respondent has had intimation of the case management discussion.**
- 7. No evidence has been produced to indicate that non- payment of rent is or was due to any issue with payment of State Benefits to the Respondent.**
- 8. As at the date of service of the Notice under Section 19 of the 1988 Act and as at the date of the case management discussion, at least three months' rent lawfully due from the Respondent is in arrears.**

### **Reasons**

**The Tribunal accepted the documentary evidence before it to support that there is a short assured tenancy in existence in respect of the Property, that**

**the rent contractually due in respect of that tenancy is £350 and that there were arrears on 4<sup>th</sup> December 2019 of £4,330.**

**The Tribunal accepted the documentary evidence in respect of the required Section 19 Notice served on the Respondent and the notice under the Homelessness etc. (Scotland) Act 2003 served on the local authority.**

**The Tribunal accepted Mr Ranalli's submission that the current level of rent arrears is £6,120 which he said took account of the payment made in February 2020. Mr Ranalli said that he had no knowledge that the arrears of rent was as a result of the Respondent having any difficulties with payment of any State benefits. He said that the Applicant had been patient with the Respondent who had had difficulties with payment of rent over a number of years and that the arrears had accrued over a period of three years.**

**The Tribunal noted that the AT6 form before it was unsigned and undated but accepted Mr Ranalli's that this was a copy of the form which was served on the Respondent.**

**The Tribunal considered that it had sufficient information to determine the Application and that a Hearing was not required. The Tribunal granted the order of possession.**

### **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.**

A black rectangular redaction box covering the signature of Martin J. McAllister.

**Martin J. McAllister,  
Legal Member,  
20<sup>th</sup> August 2020**