



**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/20/0765**

**Re: Property at 2 Barnflat Court, Avenue Street, Rutherglen, Glasgow, G73 1JX  
("the Property")**

**Parties:**

**Capita Trust Company Limited, c/o Touchstone, 2 Crescent Office Park, Clarks  
Way, Bath, BA2 2AF ("the Applicant")**

**Mr Olatunde Onwukwe ("the First Respondent"), Ms Amina Hmkana ("the  
Second Respondent"), 2 Barnflat Court, Avenue Street, Rutherglen, Glasgow,  
G73 1JX (together, "the Respondents")**

**Tribunal Members:**

**Nairn Young (Legal Member)**

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

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

- Background

This is an application for an order for recovery of possession of the Property which is occupied by the Respondents in terms of an assured tenancy with the Applicant. The application is conjoined with an application for an order for payment of alleged rent arrears (Tribunal ref: FTS/HPC/CV/20/0766), which arrears are also the basis for this application. Both cases called for a case management discussion ("CMD") at 10am on 8 February 2021, by teleconference. The Applicant was represented on the call by Mr Caldwell of Patten and Prentice LLP, Solicitors. The First Respondent did not join the call and was not represented. The Second Respondent joined the call in person.

- Findings in Fact

1. The Respondents took occupation of the Property in terms of a short assured tenancy dated 26 June 2015.
2. The initial term of that tenancy was for 6 months, with the tenancy to run from month to month thereafter until terminated.
3. The rent in terms of that agreement was £625 per month.
4. The Applicant purchased the Property on 26 June 2015 and became infert upon its title being registered on 2 July 2015.
5. On 29 January 2020, the Applicant served a notice to quit on the Respondents, effective on 26 April 2020.
6. Also on 29 January 2020, the Applicant served a form AT6 on the Respondents, indicating that it wished to regain possession of the Property on Grounds 8, 11 and 12 of Schedule 5 the Housing (Scotland) Act 1988 ('the Act').
7. At that date, the Respondents owed the Applicant £2,575 in rent arrears.
8. The Respondents' contractual tenancy came to an end on 26 April 2020.
9. The First Respondent no longer occupies the Property and has not made any payment towards the rent for several years.
10. Second Respondent remains in occupation of the Property in terms of a statutory assured tenancy.
11. As of the date of the CMD, the Respondents owe the Applicant £4,825 in unpaid rent.

12. The Second Respondent is unable to cover the ongoing rental payments due.

13. Since this application was made on 3 March 2020, the arrears of rent owed by the Respondents has increased by £2,350.

14. The arrears are not a result of any delay or failure in payment of a relevant housing benefit or universal credit.

- Reasons for Decision

15. Ground 8 of Schedule 5 to the Act is established.

16. The Tribunal considers that it is reasonable in all the circumstances to grant an order for possession. The First Respondent has not lived at the Property for some years and did not enter appearance at any stage in the Tribunal process. The Second Respondent admitted in the course of the CMD that she does not have the means to pay the ongoing rent charge. The arrears are significant. They were already at that level in March 2020, prior to any impact on the Second Respondent's finances wrought by coronavirus restrictions; and they have increased by a significant amount since the application was made. Against that background, the possibility that the Second Respondent held out that some payment towards the arrears may be made following receipt of a payment from the Tenant Hardship Loan Fund cannot offer a solution to the situation. While there is potentially prejudice to the Second Respondent in granting the order, the Tribunal observes that the order may not be enforced while the area the Property is situated in remains subject to tier 3 or 4 restrictions. The impact is therefore mitigated and the granting of the order may in fact speed the Second Respondent's access to a more suitable property via the local authority.

- Decision

Order for possession 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.

**Nairn Young**

08/02/2021

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**Legal Member/Chair**

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**Date**