



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 18(1) of the Housing
(Scotland) Act 1988**

Chamber Ref: FTS/HPC/EV/20/2496

Re: Property at 77 Appin Terrace, Perth, PH1 2LU (“the Property”)

Parties:

**Mrs Ruth Catherine Miller, c/o Letting Direct, 8 Atholl Crescent, Perth, PH1 5NG
 (“the Applicant”)**

Mr Rodger Findlay, 77 Appin Terrace, Perth, PH1 2LU (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for possession of the property and the removal of the Respondent from the property.

Background

1. By application dated 30 November 2020 the Applicant’s representatives Kippen Campbell, Solicitors, Perth applied to the Tribunal for an order for recovery of possession of the property arising from alleged rent arrears accrued from the Respondent’s tenancy of the property. The Applicant’s representatives submitted a rent statement, copy of the tenancy agreement, copy AT5, Notice to Quit, S33 Notice, Form AT6 with proof of service, Letter to Perth & Kinross Council and Section 11 Notice in support of the application.
2. By Notice of Acceptance dated 14 December 2020 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.

3. Intimation of the Case Management Discussion was sent to the Applicant's representatives by post and intimation was given to the Respondent by Sheriff Officers on 22 December 2020.
4. The Applicant's representatives submitted written representations to the Tribunal by email dated 4 February 2021.

The Case Management Discussion

5. A Case Management Discussion was held by teleconference on 8 February 2021. The Applicant was represented by Mrs Sally McCartney of the Applicant's representatives. The Respondent did not attend. The Tribunal being satisfied that proper intimation of the Case Management Discussion had been given to the Respondent determined to proceed in his absence.
6. Mrs McCartney referred the Tribunal to the documents submitted with the application and the written representations and submitted that having complied with all the statutory requirements it could be shown that the terms of grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 ("the 1988 Act") as amended by the Coronavirus (Scotland) Act 2020 had been met and that the order for possession should therefore be granted.
7. Mrs McCartney confirmed that shortly before the Respondent had been due to leave the property in terms of the Notice to Quit, he had offered to make payment to start to clear the arrears but when advised that the Applicant was insisting on possession no payment had been made. Mrs McCartney advised that in addition to the rent due of £9472.95 as at the date of the application a further three months rent had now become due.
8. In response to a query from the Tribunal as to the reasonableness of granting the order sought Mrs McCartney submitted that the Respondent had accrued significant rent arrears in advance of the pandemic occurring and therefore these would not have been due to the Respondent being furloughed or made unemployed but rather due to a systematic failure to pay rent throughout 2019. Mrs McCartney went on to say that as far as she was aware the Respondent lived alone and was in employment. He had offered to make payment but had then not done so. Mrs McCartney explained that she thought the Applicant had a heritable security over the property as this was referred to in the Tenancy Agreement. She was also aware that the Applicant was now in a care home and that the property needed to be sold to meet the care home fees which were continuing to build up. In all the circumstances she submitted that it was reasonable to grant the order sought.

Findings in Fact

9. The parties entered into a Short Assured Tenancy that commenced on 28 April 2017 for a period of six months and renewed by tacit relocation thereafter every six months.

10. The monthly rent was £595.00.
11. The Applicant's representatives sent a Section 33 Notice, a Notice to Quit and a Form AT6 on the Respondent by Recorded Delivery post on 16 April 2020.
12. Said notices and form were validly executed.
13. The said notices and form were delivered on 17 April 2020.
14. As at the date of service of the Form AT6 the Respondent had accrued rent arrears of £5902.95 an amount in excess of three month's rent.
15. The Applicant's representatives sent a Section 11 Notice to Perth & Kinross Council by post on 30 November 2020.
16. As at the date of the Case Management Discussion the Respondent was due rent amounting to £11257.95 an amount in excess of three month's rent.
17. The property requires to be sold in order to meet the Applicant's care home costs.

Reasons for Decision

18. The Tribunal was satisfied from the documents, the written representations and the oral submissions that the parties had entered into a Short Assured Tenancy that commenced on 28 April 2017 for a period of six months until 27 October 2017 and then continued thereafter for blocks of six months by tacit relocation.
19. The Tribunal was also satisfied that the rent due in terms of the agreement was £595.00 per month and that the Respondent had fallen into arrears during 2019 prior to the Covid-19 pandemic. The rent due at the time of serving the Notice to Quit and Form AT6 amounted to £5902.95 which was substantially in excess of three month's rent. The Respondent has persistently failed to pay rent lawfully due and some rent was unpaid on the date proceedings were begun and was in arrears at the date of service of Form AT6. The Tribunal was therefore satisfied that subject to the reasonableness test Grounds 8, 11 and 12 of Schedule 5 of the 1988 Act had been satisfied.
20. Following service of the notices the Tribunal was satisfied that the Respondent failed to make any further payments of rent and by the time of the Case Management discussion the rent due by the Respondent had increased to £11257.95.
21. The terms of the Housing (Scotland) Act 1988 have been amended by the Coronavirus (Scotland) Act 2020 and the Tribunal required to be satisfied in all the circumstances that it would be reasonable to grant the order. The Tribunal was satisfied that all three grounds in Schedule 5 had been satisfied as in addition to the Respondent having accrued the equivalent of almost 19 months arrears of rent it would appear that there may be a heritable security over the

property that the Applicant has to pay and in addition the Applicant is now living in a care home and requires to sell the property in order to meet her care home costs. In contrast the Tribunal was advised that the Respondent although in employment has made no effort to make any payment and has not responded to this application. In the case of City of Glasgow District Council v Erhaiganoma 1993 SCLR 592, the Inner House of the Court of Session stated at page 594 that “Where prima facie reasonableness has been made out, we think that it is then for the tenant to put circumstances before the court to show otherwise.” In these circumstances the Tribunal and having considered the whole circumstances, the Tribunal is satisfied that it is reasonable to grant the order.

22. The Tribunal was satisfied it had sufficient information before it to grant the order without a further hearing.

Decision

23. The Tribunal finds the Applicant entitled to an order for the possession of the property and the removal of the Respondent from 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.

Graham Harding

**Graham Harding
Legal Member/Chair**

**8 February 2021
Date**