



**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/21/1308

**Re: Property at 32 Muirkirk Road, Lugar, Cumnock, Ayrshire, KA18 3LJ (“the
Property”)**

Parties:

**Mr Mark Howells, 34 Bankton Avenue, Livingston, West Lothian, EH54 9LD
 (“the Applicant”)**

Mr Kenneth Martin, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member) and Elaine Munroe (Ordinary Member)

Decision (in absence of the Respondent)

- 1. The tribunal determined that an order for the eviction of the respondent from the property at 32 Muirkirk Road Lugar Cumnock Ayrshire KA18 3LJ be made on the basis of ground 8, that both at the date of service of the s19 notice and at 3 September 2021 at least three months’ rent lawfully due from the respondent is in arrears and, it is reasonable in all of the circumstances to grant an eviction order.**
- 2. This was a case management discussion ‘CMD’ in connection with an application for eviction in terms of s18 of the Housing (Scotland) Act 1988 and Rule 65 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 ‘the rules’. The applicant Mr Howells attended. The respondent did not attend and was not represented. The case had proceeded with service by advertisement as sheriff officers visited the property in July 2021 and concluded it was empty and abandoned. The tribunal had sight of the certificate of service by advertisement and proceeded with the CMD in terms of rule 24 and 29 as the tribunal was satisfied that the respondent had received the appropriate notice and it was fair to proceed.**

3. The tribunal had before it the following copy documents: -

- (1) Application dated 1 June 2021.
- (2) Tenancy Agreement dated 5 May 2016.
- (3) Notice to quit dated 13 October 2020.
- (4) Proof of service of notice to quit.
- (5) AT6 dated 13 October 2020.
- (6) S11 notice.
- (7) Land certificate.
- (8) Extract from the landlord register.
- (9) Check in report.
- (10) Check out report.
- (11) Rent schedule.
- (12) Bank statements.
- (13) Sheriff Officer's report dated 15 July 2021.
- (14) Certificate of Service by advertisement dated 3 September 2021.

Preliminary matters

4. Mr Howells clarified that notwithstanding the property had been abandoned by the respondent, he was seeking an order for eviction on the basis that there were rent arrears in excess of three months and it was reasonable in all of the circumstances for the eviction order to be granted. The tribunal noted that the AT6 made reference to a rent schedule but the rent schedule which was attached to it had not been lodged with the application. Further, the rent schedule which had been lodged had slightly different amounts to those referred to in the AT6. The AT6 referred to arrears of £14865 as at 5 October 2020 whereas the rent schedule before the tribunal referred to arrears at that date of £15315. There seemed to be a difference of around £450. Mr Howells emailed the schedule attached to the AT6 for the tribunal to peruse it. It was his position that the difference between the two figures related to skip hire charges. In any event the tribunal noted the rent arrears were substantial and well in excess of three months. The tribunal was satisfied that the respondent had been given fair notice of the arrears by the AT6 and the schedule attached to it.

Discussion

5. Mr Howells submitted that it was reasonable in all of the circumstance to grant the order on the basis that no rent had been paid for the property since February 2020. It was his position that the respondent may have moved out of

the property some time in 2020. He had tried to communicate with him on several occasions without success. As far as he is aware, the respondent is the director of a gardening company and there has been no eligibility for housing or other benefits to pay towards the rent. It was his understanding that the respondent had separated from his wife and may have had his 4 children residing in the property some of the time. The property needs essential work done to the roof and exterior and the applicant intends to sell the property once the essential works have been completed.

6. Findings in fact

- (1) The applicant's wife Mrs Gillian Howells is the owner of the property.
- (2) The applicant was authorised by Mrs Howells to act as landlord for the property.
- (3) The parties entered into an assured tenancy agreement for let of the property on 5 May 2016.
- (4) The agreed rent was £650 per month with a reduction to £550 if the respondent carried out maintenance to the house and garden.
- (5) A valid notice to quit and AT6 dated 13 October 2020 were served on the respondent by sheriff officer on 19 October 2020.
- (6) The tenancy has reached its end and tacit relocation is not operating.
- (7) The respondent began to accrue rent arrears in December 2016.
- (8) As at the date of the AT6 the rent arrears were in excess of three months.
- (9) As at the date of the CMD the rent arrears were in excess of three months.
- (10) The rent arrears are not wholly or partly due to a failure or delay in payment of a relevant benefit.
- (11) The respondent vacated the property in 2020.
- (12) It is reasonable in all of the circumstances that an eviction order be granted.

Reasons

7. This was an unopposed application for eviction in connection with an assured tenancy. The tribunal was satisfied that it had sufficient information before it to make a decision and the procedure had been fair.
8. The correct notice period is 6 months in terms of the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020. The notice to quit and AT6 were dated 13 October 2020 and were served on 19 October 2020. The notice to quit tied in with the end date of 5 May 2021 and the AT6 had the correct 6 month notice period.

9. The tribunal took into account the written documents lodged in support of the application, and the submission made by Mr Howells. .
10. Given the amendments to the Coronavirus (Scotland) Act 2020, the tribunal must be satisfied that the eviction ground is met and that it is reasonable in all of the circumstances to grant the eviction. The tribunal was satisfied on the evidence produced by the applicant that the eviction ground was met. The two rent schedules lodged make it clear that as the date of the AT6 and as at 3 September 2021 there were substantial rent arrears in excess of three months rent.
11. The tribunal was satisfied that it is reasonable to grant the eviction order sought. The rent arrears did not accrue due to a failure or delay in payment of housing benefit. The respondent has abandoned the property and has not paid any rent since February 2020. The applicant wants to take possession of the property and carry out essential repairs with a view to selling it. Having regard to the whole circumstances of the case the tribunal was also satisfied that it was reasonable to grant the order.

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.

Lesley Ward

3 September 2021

Lesley A Ward Legal Member

Date

