

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section under Section 18 of the Housing (Scotland) Act 1988 (“the Act”) and Rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)**

**Chamber Ref: FTS/HPC/EV/21/2784**

**Re: Property at 62/4 Albion Road, Edinburgh, EH7 5QZ (“the Property”)**

**Parties:**

**Miss Jill Craig, PO Box 2640, Ellenbrook, Western Australia, Australia 6069, Australia (“the Applicant”) per her agents, Braemore, Orchard Brae House, 30 Queensferry Road, Edinburgh EH4 2HS (“the Applicant’s Agents”)**

**Mr David Ritchie, 62/4 Albion Road, Edinburgh, EH7 5QZ (“the Respondent”)**

**Tribunal Members:**

**Karen Moore (Legal Member) and Eileen Shand (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Eviction be granted.**

**Parties:**

**Miss Jill Craig, PO Box 2640, Ellenbrook, Western Australia, Australia 6069, Australia (“the Applicant”) per her agents, Braemore, Orchard Brae House, 30 Queensferry Road, Edinburgh EH4 2HS (“the Applicant’s Agents”)**

**Mr David Ritchie, 62/4 Albion Road, Edinburgh, EH7 5QZ (“the Respondent”)**

**Tribunal Member:**

**Karen Moore (Legal Member) and Eileen Shand (Ordinary Member)**

## Background

1. By application received between 9 and 29 November 2021 (“the Application”), the Applicant’s Agents applied to the Tribunal for an Order for eviction and possession of the Property based on the Ground that there are rent arrears for more than three consecutive months. The Application comprised a copy of the tenancy agreement, a statement of rent due and owing, copy Notice to Quit in the prescribed form served on both Respondents and copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Edinburgh City Council, being the relevant local authority. The Application was accepted by the Tribunal and a Case Management Discussion (the “CMD”) was fixed for 18 February 2022 by telephone conference call and intimated to the Respondent by Sheriff Officer service.
2. The CMD took place on 18 February 2022 at 14.00 by telephone conference call. The Applicant did not take part and was represented by Mr. Behm of the Applicants’ Agents. The Respondent did not take part and was not represented.
3. At the CMD the Tribunal advised that it was satisfied in respect of the competence of the Application but could not be satisfied that it was reasonable to grant the Order. Therefore, The Tribunal adjourned the CMD to a Hearing on 3 May 2022 at 10.00 by telephone conference call and issued the following Direction:-
  - 1) *With reference to Ground 8 of Schedule 5 to the Housing (Scotland) Act 1988 (“the 1988 Act”) and Regulation 3 of the Rent Arrears Pre-action Requirements (Coronavirus) (Scotland) Regulations 2020, the **Tribunal directs the Applicant** to produce documentary evidence of compliance with Regulation 3 which Regulation states that the Scottish Ministers specify the pre-action requirements as (1) For the purposes of section 18(3C) of the 1988 Act, the Scottish Ministers specify the pre-action requirements set out in paragraphs 2 to 4. (2) The provision by the landlord to the tenant of clear information relating to (a)the terms of the tenancy agreement, (b)the amount of rent for which the tenant is in arrears, (c)the tenant’s rights in relation to proceedings for possession of a house (including the pre-action requirements set out in this regulation), and (d)how the tenant may access information and advice on financial support and debt management. (3) The making by the landlord of reasonable efforts to agree with the tenant a reasonable plan to make payments to the landlord of (a)future payments of rent, and (b)the rent for which the tenant is in arrears. (4) The reasonable consideration by the landlord of (a)any steps being taken by the tenant which may affect the ability of the tenant to make payment to the landlord of the rent for which the tenant is in arrears within a reasonable time, (b)the extent to which the tenant has complied with the terms of any plan agreed to in accordance with paragraph (3), and (c)any changes to the tenant’s circumstances which are likely to impact on the extent to which the tenant complies with the terms of a plan agreed to in accordance with paragraph (3);*
  - 2) *The **Tribunal directs the Applicant** to submit a statement of rent due and owing which does not include late payment charges;*

- 3) *The **Tribunal directs the Respondent** to produce documentary evidence of any applications for state benefits applied for by him and the outcome of such applications made by them in respect of the rent arrears accrued by him and*
  - 4) *The **Tribunal directs the Applicant and the Respondent** to provide evidence or information in respect of their personal and other circumstances which they wish the Tribunal to consider in reaching a decision that it is reasonable to issue an eviction order in terms of Section 18 (3A) of the 1988 Act.*
4. The Applicant's Agents on her behalf complied with the Direction in full and the Applicant submitted an Impact Statement and an updated Impact Statement prior to the Hearing. The Respondent did not comply with the Direction.

### **Hearing**

5. The Hearing took place on 3 May 2022 at 10.00 am by telephone conference. The Applicant took part and was again represented by Mr. Behm of the Applicant's Agents. The Respondent did not take part.
6. Mr. Behm addressed the Tribunal in respect of the Application and advised that the Respondent has not made any contact nor had he attempted any form of engagement with the Applicant's Agents. Mr. Behm confirmed that the unpaid rent currently stands at £10,080.00, which equates to 17 months of unpaid rent. Mr. Behm advised the Tribunal that the Property is a traditional ground floor one-bedroom flat and has not been adapted for a person with varying needs. As far as Mr. Behm is aware, the Respondent is a single person who lives alone.
7. The Applicant addressed the Tribunal in respect of her Impact Statement and confirmed the financial losses and emotional distress which the non-payment of rent and the eviction process has caused to her.

### **Findings in Fact.**

8. From the Application, the documents lodged and the Hearing, the Tribunal made the following findings in fact:-
  - i) There is a short assured tenancy between the Parties at a monthly rent of £450.00 and which commenced on 1 February 2020
  - ii) Rent arrears began accruing in August 2020 and the Respondent has not paid any rent to the Applicant since December 2020;
  - iii) Rent arrears amount to £10,080.00 to date;
  - iv) The Applicant has mortgage and common repairs financial commitments in respect of the Property and relies on the rent to assist in meeting these commitments;
  - v) The Applicant is suffering a substantial financial loss and
  - vi) The Applicant suffers from health issues, the extent of which are being worsened by the stress of the Respondent's breach of the tenancy agreement.

### **Issue for the Tribunal.**

9. Having held at the CMD that the statutory provisions for the eviction process had been complied with and that the Grounds for eviction had been established, the issue

for consideration by the Tribunal at the Hearing is to determine if it is reasonable to grant the Order.

### **Decision and Reasons for the Decision**

10. The Tribunal had regard to the whole circumstances of the matter. Whilst the Tribunal recognised that the Respondent had conducted a satisfactory tenancy for almost 10 years, the Tribunal considered that the Respondent remaining in the property with rent arrears continuing to accrue is untenable for both Parties. The Applicant is entitled to payment of the rent and relies on that rent to finance the running of the Property. The Respondent's debt to the Applicant is significant and, despite efforts by the Applicant's Agents to offer solutions, he has made no attempt to mitigate the rent due. If the Respondent remains in the Property his debt to the Applicant will increase and the financial burden on him will also increase.
  
11. The Tribunal had regard to the Applicant's written and oral Impact Statements. The Tribunal found the Applicant to be truthful and measured, in the whole circumstances, and accepted that she is suffering detriment in respect of both her health and finances. The Tribunal accepted that the Applicant's Agents have done as much as they could be expected to do to engage with the Respondent and offer support, without success.
  
12. Accordingly, in all the circumstances, the Tribunal determines that it is reasonable to grant the Order sought.

### **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.**

Karen Moore

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**Legal Member/Chair**

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**Date 3 May 2022**