



**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/22/0566

Re: Property at Flat 1 22 Haymyre Street, Edinburgh, EH6 8QD (“the Property”)

Parties:

**Places for people scotland, touchstone, 2 crescent office park, clarks way, bath,
BA2 2AF (“the Applicant”)**

**Mr Konrad Seweryn Iwan, Katarzyna Ziemnik, Flat 1 22 Haymyre Street,
Edinburgh, EH6 8QD (“the Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision (in absence of the Respondents)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined to make an order for repossession against the
Respondents**

- 1 By application to the Tribunal the Applicant sought an order for repossession against the Respondents under section 18 of the Housing (Scotland) Act 1988.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 20 May 2022. Due to the ongoing restrictions arising from the Covid-19 pandemic the Case Management Discussion was directed to take place by tele-conference.
- 3 On 5th April 2022 the Respondents were served with a copy of the application paperwork together with notification of the date and time of the Case Management Discussion by Sheriff Officers with instructions for joining the tele-conference.

Case Management Discussion

- 4 The Case Management Discussion took place on 20 May 2022. The Applicant was represented by Mr Caldwell, of Patton and Prentice Solicitors. The Respondents were not present.
- 5 The Tribunal explained the purpose of the Case Management Discussion. It was noted that the application paperwork had been served upon the Respondents by Sheriff Officers, with details for joining the case conference. Accordingly the Tribunal was satisfied that the notification requirements had been complied with and determined to proceed with the Case Management Discussion in their absence.
- 6 Mr Caldwell confirmed that the Applicant sought an order for eviction. He made reference to the Form AT6 which had been served on the Respondents on 23 June 2022 and was therefore in force as at the date of raising the proceedings. He advised that eviction was sought on grounds 8, 11 and 12 in relation to unpaid rent. The arrears had now risen to £17,181.80, which was supported by an updated rent statement lodged with the Tribunal in advance of the Case Management Discussion. The statement showed a pattern of arrears accruing. A balance of arrears had been paid by the Respondents in December 2019 but since then payments had been irregular. Since June 2020 only two payments had been made, the last of which was on 25th November 2021 in the sum of £600. The balance equated to approximately 21 months of unpaid rent.
- 7 Mr Caldwell submitted that it would be reasonable to grant the order for eviction. He confirmed that the tenants were both Polish by birth and 32 years old. They had been previously working as housekeepers but their current circumstances were unknown due to a lack of contact on their part. He believed there were no dependents in the household, there was no information to support this. Letters had been issued to the Respondents in February, March and April 2022 trying to engage them but there had been no dialogue or contact. They had been provided with their tenancy agreement, current rent statements and a leaflet from the Scottish Government with advice, thereby the pre-action requirements had been complied with. There were no language difficulties that the Applicant was aware of.

Findings in Fact and Law

- 8 The parties entered into a Private Residential Tenancy Agreement which commenced on 17th May 2012. The tenancy was a Short Assured Tenancy as defined by section 32 of the Housing (Scotland) Act 1998 (“the 1988 Act”).
- 9 The Tenancy Agreement makes provision for the tenancy to be terminated on grounds 8, 11 and 12 of Schedule 5 of the 1988 Act.
- 10 The Respondents have been served with Form AT6 dated 23rd June 2021 citing grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988

as the grounds upon which the Applicant seeks repossession. The Form AT6 was served upon the Respondents by Sheriff Officers on 23rd June 2022.

- 11 The Form AT6 complies with the requirements of section 19 of the Housing (Scotland) Act 1988 and is in the prescribed form.
- 12 The rent due under the said Tenancy Agreement is £595 per month.
- 13 As at the date of service of the Form AT6, rent arrears in the sum of £9404.89 were outstanding.
- 14 As at the date of the Case Management Discussion arrears in the sum of £17,181.80 were outstanding.
- 15 The arrears of rent are not due to any failure to pay housing benefit or its equivalent.
- 16 The provisions of grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 have been met.
- 17 It is reasonable to grant the eviction order.

Reasons for Decision

- 18 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Tribunal noted that the application paperwork had been served upon the Respondents by Sheriff Officers. They had not taken the opportunity to make written representations regarding the application, nor had they attended the Case Management Discussion, despite being requested to do so and being provided with the details to access the teleconference facility.
- 19 The Applicant sought an order under section 18 of the Housing (Scotland) Act 1988 and had served the Respondent with a Form AT6 notice of their intention to raise proceedings for possession under section 19 of the said Act. The Applicant had also served a Notice to Quit upon the Respondents. On the basis that the Tenancy Agreement made provision for the tenancy to be terminated on the grounds upon which the Applicant sought repossession, there was no requirement to consider the Notice to Quit and therefore it did not form part of the Tribunal's considerations in its determination of the application.
- 20 The Applicant relied upon ground 8 of schedule 5 of the said Act as the basis for the application for repossession. In terms of ground 8, the Tribunal must be satisfied that at least three months rent lawfully due is in arrears both at the date of service of the Form AT6 and the date of the Case Management Discussion. The Applicant had also sought to rely on grounds 11 and 12. In

terms of grounds 11 and 12 the Tribunal must be satisfied that the tenants have persistently delayed in paying rent that has become lawfully due and that some rent lawfully due is unpaid on the date on both the date of service of the Form AT6 and the date on which proceedings for possession were begun.

- 21 The Tribunal accepted based on the Applicant's written submissions that the rent due under the terms of the tenancy agreement between the parties was £595 per month and that at least three months rent was unpaid when the Form AT6 was served. The Tribunal further accepted based on the submissions from the Applicant's representative at the Case Management Discussion that the arrears had now increased to £17,181.80. There was no evidence before the Tribunal to suggest that the arrears of rent were due to any failure to pay housing benefit or its equivalent. They had arisen over a prolonged period of time as a result of the Respondents' failure to make the payments due. The Respondent had not sought to contradict any of the information put forward by the Applicant therefore the Tribunal accepted it as fact. The Tribunal therefore found that the provisions of grounds 8, 11 and 12 had been met.
- 22 The Tribunal then had to consider the reasonableness of granting the order. The arrears were significant, equating to approximately 21 months unpaid rent. There was no evidence before the Tribunal to suggest that the arrears of rent were due to any failure to pay housing benefit or its equivalent. The Applicant had complied with the pre-action requirements by notifying the Respondents of the increasing arrears and pointing them to sources of advice and assistance. The Respondents had failed to engage despite the attempts made by the Applicant. The Tribunal noted that there were no dependents in the property and both Respondents had been previously in employment, although their current situation in that regard was not known. Balancing the particular facts and circumstances of the case, the Tribunal ultimately concluded that it would be reasonable to grant the order.
- 23 The decision of the Tribunal was unanimous.

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.

R. O

20 May 2022

Legal Member/Chair

Date