



**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/22/1327**

**Re: Property at Greenacres, Polmont, Falkirk, FK2 0XS (“the Property”)**

**Parties:**

**Klondyke Properties Ltd, Beancross Road, Polmont, Falkirk, FK1 4LY (“the Applicant”)**

**Mr David Machray, Mrs Michelle Machray, Greenacres, Polmont, Falkirk, FK2 0XS (“the Respondent”)**

**Tribunal Members:**

**Yvonne McKenna (Legal Member) and Frances Wood (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to the Order sought for recovery of possession of the Property.**

**Background**

1. This was an application in terms of rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, (‘the rules’) and s18 of the Housing (Scotland) Act 1988, (‘the Act’).
2. There was a previous application in respect of the Property, involving the parties, which had been an application for rent arrears in terms of rule 70 which was dealt with by the Tribunal under reference

FTS/HPC/CV/21/2638. The Tribunal granted an Order for Payment in respect of rent arrears in the sum of £5360 on 6 April 2022.

3. The Tribunal had before it the following copy documents:

- (1) Application dated 4 May 2022
- (2) Tenancy agreement signed 12 May 2014
- (3) E-mail correspondence between the Applicant's Financial Accountant Graeme Smith and the Respondent dated 7 June 2020-29 December 2020
- (4) First Reminder from Graeme Smith to the Respondent dated 8 June 2021
- (5) Second Reminder Letter from Diane McGarry the Applicant's Chief Accountant and the Respondent dated 28 July 2021
- (6) Third Reminder Letter from Diane McGarry to the Respondent dated 16 August 2021.
- (7) E-mail from Dianne McGarry to the Respondent dated 21 October 2021
- (8) Pre-action Letter from the Applicant's solicitors to the Respondent dated 21 January 2022
- (9) E-mail correspondence from the Applicant's solicitors to the Respondents dated 21 January 2022-9 February 2022
- (10) Letter from the Applicant's solicitors to the Respondents dated 9 February 2022
- (11) Letter from the Applicant's solicitors to the Respondents dated 25 February 2022
- (12) Decision of the Tribunal re FTS/HPC/CV/21/2638 dated 6 April 2022
- (13) AT6 Notices to the Respondents dated 6 April 2022
- (14) Executions of Service of AT6 dated 7 April 2022 by Sheriff Officer
- (15) E-mail from the Applicant's solicitors to Falkirk Council enclosing Section 11 Notice dated 5 May 2022

(16) Section 11 Notice

(17) Rent statement dated May 2022

### **The Case Management Discussion 4 August 2022 2pm**

4. The Case Management Discussion (CMD) took place at 2pm on 4 August 2022 by teleconference .The Applicant was represented by Ms Francesca Glendinning. There was no appearance by the Respondent.
5. No written representations have been received by the Tribunal from the Respondent.
6. Ms Glendinning provided the Tribunal with the up-to-date position from the Applicant's perspective. She said that since the AT6 Notices had been served on the Respondent and the Application to the Tribunal was made that the Respondent had made contact with the debt advice services at Falkirk Council. In June 2022 the Applicant's solicitors received an e-mail from the Council requesting further information. This information had been collated and forwarded to Falkirk Council on 24 and 25 June 2022. The Applicant had understood that a payment proposal would be forthcoming but no proposals have been received and no payments towards the arrears have been made. She sought the Order for Possession of the Property.
7. Ms Glendinning said that the arrears of rent stood at £5360. The Respondent has been paying the rent but has made no contribution to the arrears.
8. In relation to the Respondents' position Ms Glendinning said that Mr Machray is a self-employed joiner and had experienced difficulties during the pandemic with being unable to work. She said that she understood that Mrs Machray had needed to give up her work either due to accident or injury. She understood that Mrs Machray was in receipt of benefits. As far as she is aware, there are no benefit issues that have contributed to the arrears. The arrears of rent accrued during the pandemic. However there has been no payment received towards the arrears and the Respondent has failed to reach any agreement with the Applicant regarding how the arrears are to be resolved. The Applicant's position is that substantial arrears of rent are due (in excess of 6 months), and the Order for Possession is sought.
9. Regarding whether or not it is reasonable to grant the Order Ms Glendinning said that the Applicant had made several efforts to contact the Respondent both by e-mail written contact and via telephone and attempted face to face contact. She referred to all the documentation which was before the Tribunal. She referred to the fact that the Applicant had on several occasions

encouraged the Respondent to make contact regarding a repayment plan and had signposted the Respondent in the direction of appropriate advice agencies. The Applicant has done what can reasonably be done by a landlord and seeks the Order for Possession on the basis that this is reasonable.

### **Findings in Fact**

10. The Respondent entered into a short assured tenancy in respect of the Property which commenced on 12 May 2014.

11. Rent was payable by the Respondent at the rate of £880 per calendar month.

16. The Applicant's Representative served the Notice in terms of section 19 of the Act (AT6) on the Respondent by Sheriff Officers on 7 April 2022.

17. As at the date of service of the Notices, the Respondent was in arrears of rent in the sum of £5360 which is an amount in excess of 3 months' rent.

18. As at the date of the CMD, the Respondent was in arrears of rent in the sum of £5360, which is an amount in excess of 3 months' rent.

19. There was no evidence before the Tribunal that the arrears of rent were due to a delay or failure in the payment of a relevant benefit.

20. It is reasonable to grant the Order.

### **Reasons for Decision**

21. The Tribunal proceeded on the basis of the documents lodged and the submissions made at the CMD. The Respondent failed to lodge written submissions and to attend at the CMD. The Respondent has received the AT6 Notice. According to the updated rent statement lodged by the Applicant, the Respondent has been in arrears of rent since April 2020. The Tribunal was satisfied that Grounds 8, 11 and 12 had been established; as at the date of service of the Notices and as at the date of the CMD, the Respondent was in arrears of rent in respect that more than 3 months' rent was lawfully due. In light of the information

provided, the Tribunal was satisfied that it was reasonable for the Tribunal to grant the Order for Eviction.

### **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.**



**Yvonne McKenna**

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**Legal Member/Chair**

**4 August 2022**

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**Date**