



**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/22/3255

Re: Property at Garlogie House, Garlogie, Westhill, AB32 6SA (“the Property”)

Parties:

**The Dickinson Trust Limited, Estates Office, Dunecht, Westhill, AB32 6AW
 (“the Applicant”)**

**Mr Andrew Dingwall-Fordyce, Garlogie House, Garlogie, Westhill, AB32 6SA
 (“the Respondent”)**

Tribunal Members:

Neil Kinnear (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that**

Background

This was an application dated 7th September 2022 brought in terms of Rule 65 (Application for order for possession in relation to assured tenancies) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant provided with its application copies of the short assured tenancy agreement, section 19 notice (form AT6), Section 11 notice, rent arrears statement, pre-action correspondence and relevant executions of service.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The form AT6 intimated to the tenant that the landlord intended to raise proceedings for possession of the house on grounds 8, 11 and 12 of Schedule 5 to the *Housing (Scotland) Act 1988*.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 26th January 2023, and the Tribunal was provided with the execution of service.

Case Management Discussion

A Case Management Discussion was held at 10:00 on 6th March 2023 by Tele-Conference. The Applicant's Mrs Telfer participated, and was not represented. The Respondent participated, and was not represented.

Mrs Telfer invited the Tribunal with reference to the application and papers to grant the order sought on grounds 8, 11 and 12 of Schedule 5 to the *Housing (Scotland) Act 1988*. The form AT6 narrated rent arrears of £27,800.00 at the time of the notice.

That figure had increased to £41,800.00 as of the date hereof. The monthly rental due in terms of clause 4.1 of the tenancy agreement is £1,750.00 per month.

Clause 7 of the tenancy agreement provides that the landlord may terminate the tenancy at any time on grounds 8, 11 and 12, which are set out in full in Schedule 2 to the written lease agreement.

The Respondent confirmed that he accepted the level of arrears and did not oppose the granting of the order. He explained that he had suffered business difficulties which resulted in him having little income, but hoped in due course to resolve those and repay the rent arrears.

Statement of Reasons

In terms of Section 18(3) of the *Housing (Scotland) Act 1988* as amended by the *Coronavirus (Scotland) Act 2020* ("the Act"), if the Tribunal is satisfied that any of the grounds in Part I of Schedule 5 to the Act is established then, subject to subsections (3A) and (6), the Tribunal shall make an order for possession.

Section 18(3A) of the Act provides that if the First-tier Tribunal is satisfied (a) that Ground 8 in Part I of Schedule 5 to this Act is established; and (b) that rent is in arrears as mentioned in that Ground as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

The Tribunal was satisfied that ground 8 contained in Part 1 of Schedule 5 to the Act had been established, and considered that it was reasonable to make an order for possession. The Tribunal was not satisfied that rent is in arrears as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit. There was no evidence to establish any such reason for rent arrears.

In terms of Section 18(4) of the Act, if the Tribunal is satisfied that any of the grounds in Part II of Schedule 5 to this Act is established, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

Section 18(4A) of the Act provides that in considering for the purposes of subsection (4) above whether it is reasonable to make an order for possession on Ground 11 or 12 in Part II of Schedule 5 to this Act, the First-tier Tribunal shall have regard, in particular, to the extent to which any delay or failure to pay rent taken into account by the Tribunal in determining that the Ground is established is or was a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit.

The Tribunal was satisfied that grounds 11 and 12 contained in Part 2 of Schedule 5 to the Act had been established, and considered that it was reasonable to make an order for possession. The Tribunal was not satisfied that rent is in arrears as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit. There was no evidence to establish any such reason for rent arrears.

The Tribunal was satisfied that the Applicant had complied with the pre-action requirements under the *Rent Arrears Pre-action Requirements (Coronavirus) (Scotland) Regulations 2020*.

The Tribunal was satisfied that it was reasonable to make an order for possession. The arrears of rent are substantial and the Respondent did not oppose the granting of the order sought.

Decision

In these circumstances, the Tribunal made an order for possession of the house let on the tenancy as sought in this application.

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.

Neil Kinnear

Legal Member/Chair

06 March 2023
Date