



**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/22/3877**

**Re: Property at Flat 1, 6 Ashcroft Lane, Edinburgh, EH14 3JT (“the Property”)**

**Parties:**

**Places for People Scotland Limited, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”)**

**Mr Michael Davanna, Flat 1, 6 Ashcroft Lane, Edinburgh, EH14 3JT (“the Respondent”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member) and Helen Barclay (Ordinary Member)**

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

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

**Background**

This was an application dated 21<sup>st</sup> October 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), Notice to Quit, 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 20<sup>th</sup> December 2022, and the Tribunal was provided with the execution of service.

### **Case Management Discussion**

A Case Management Discussion was held at 10:00 on 17<sup>th</sup> February 2023 by Tele-Conference. The Applicant did not participate, but was represented by Mr Caldwell, solicitor. The Respondent did not participate, nor was he represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

Mr Caldwell 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 £15,939.95 at the time of the notice.

That figure had increased to £21,538.27 as of the date hereof. The monthly rental due in terms of clause 4 of the tenancy agreement is £595.00 per month.

Clause 13.3 of the tenancy agreement provides that that the landlord may terminate the tenancy at any time by serving the tenant with Notice to Quit and Form AT6 if grounds 8, 11 and 12, which are set out in full in Appendix A, are satisfied.

### **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. The Respondent has failed to respond or engage with the Applicant to agree a reasonable plan to make payments to the landlord.

In the case of *City of Glasgow District Council v Erhaiganoma* 1993 SCLR 592, The Inner House of the Court of Session stated at page 594 that “Where prima facie reasonableness has been made out, we think that it is then for the tenant to put circumstances before the court to show otherwise.”.

In this application, the Respondent had not responded to this application advancing any arguments that it was not reasonable to make an order for possession, and had not participated in the Case Management Discussion. The Respondent had put forward no circumstances to show that it would not be reasonable for the Tribunal to make an order for possession.

Having considered the whole circumstances, the Tribunal was satisfied that it was reasonable to make an order for possession.

## **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.**

# **N Kinnear**

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**Legal Member**

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**Date: 17/02/2023**