



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber)**

**Chamber Ref: FTS/HPC/EV/21/0437**

**Re: Property at 8 St David's Street, Kilpatrick Durham, DG7 3HE (“the Property”)**

**Parties:**

**Mr Richard John Cave, Rosebank, Dunreggan, Moniaive, Thornhill, DG3 4HH  
 (“the Applicant”)**

**Mr Michael Alexander Black, Ms Nikola Marie Boyd, 8 St David's Street,  
Kilpatrick Durham, DG7 3HE (“the Respondents”)**

**Tribunal Members:**

**Virgil Crawford (Legal Member) and John Blackwood (Ordinary Member)**

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

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

**BACKGROUND**

1. The Applicant is the owner and landlord of the Property and the Respondents are the tenants;
2. The tenancy commenced on 9<sup>th</sup> September 2014. While the tenancy agreement purports to be a short assured tenancy, no form in terms of s32 of the Housing (Scotland) Act 1988 (“the 1988 Act”) was provided and the Tribunal regarded the tenancy as being an assured tenancy under the 1988 Act;
3. The rent payable is £575 per month. The rent has not been increased throughout the duration of the tenancy;

4. The respondents have been in arrears of rent continually since at least June 2015, initially the arrears being low in amount. Since September 2018, at which point the arrears amounted to £2,025, the arrears have consistently increased. With the exception of payments of £499.85 made on 29<sup>th</sup> January 2021 and monthly thereafter, no rental payments had been made since 9<sup>th</sup> February 2020;
5. As at the date of the application to the Tribunal rent arrears amounted to £11,531.03; as at the date of the Case Management Discussion the rent arrears amounted to £11,756.48;
6. A notice in terms of section 19 of the 1988 Act (commonly referred to as a form AT6), dated 22<sup>nd</sup> July 2020 was served upon the Respondents. This gave notice that the landlord was seeking recovery of possession of the property on grounds 8, 11 and 12 of Schedule 5 to the 1988 Act. This notice intimated that proceedings would not be raised before 9<sup>th</sup> February 2021;
7. The AT6 was not in proper form in that the pro forma part did not reflect the current periods of notice required to be provided but the dates inserted on behalf of the Applicant did, in fact, provide the required 6 months notice of the intention to raise proceedings;
8. On 25<sup>th</sup> February 2021 an application for an order for payment of rent arrears and an application for eviction from the Property were presented to the Tribunal;
9. A notice in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the relevant local authority;

## **THE CASE MANAGEMENT DISCUSSION**

10. The applicant did not participate in the Case Management discussion but was represented by his solicitor, Mr A Turnbull of Gillespie Gifford and Brown LLP, Kirkcudbright. The respondents did not participate in the Case Management discussion. The Tribunal was in receipt of an execution of service by sheriff officers confirming that the place, date and time of the Case Management Discussion had been intimated to the Respondents, together with a copy of the case papers. In the circumstances the Tribunal, being satisfied in terms of Rule 24 of The First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (the "FTT Rules") that the Respondent had received reasonable notice of the same determined that it was appropriate to proceed in accordance with Rule 29 of the FTT Rules;

11. While the respondents did not participate in the Case Management Discussion, on 14<sup>th</sup> May 2021 the Respondent Nicola Boyd submitted a written representation to the tribunal in which she made comments that the property “has never been up to standard” and that “I am aware that the eviction will almost likely be granted.” The representations made no reference to rent arrears nor any reason for rent arrears having arisen. In particular, the representations made no reference to any failure or delay in the payment of any relevant benefit;
12. Despite the failure of the Respondents to participate in the Case Management Discussion the Tribunal still required to determine whether or not it was reasonable for an order to be granted. To enable that determination to be made, the Tribunal made enquiry of Mr Turnbull in relation to various matters;
13. In relation to the rent arrears, the current level of rent arrears was stated to be £11,756.48. Considering the arrears as at 9<sup>th</sup> February 2021 amounted to £11,531.03 an explanation was provided in relation to the relatively small increase since that date. It was explained that housing benefit was now being paid to the Respondents in the sum of £499.85 per month and that was now being paid directly to the Applicant. The shortfall per month, therefore, was £75.15. No payments had been made by the respondents personally and, as a result, the arrears had increased by £75.15 per month since then;
14. Enquiry was made in relation to whether or not any element of the arrears arose as a result of the delay or failure in the payment of any relevant benefit. Mr Turnbull was not aware of any such difficulty. He did explain that a payment of £866.08 received on 24<sup>th</sup> January 2020 and a payment of £433.04 received on 7<sup>th</sup> February 2020 were understood to have been made following benefits being paid to the Respondents. Thereafter, however, no further payments were made at all until the payment of £499.85 on 29<sup>th</sup> January 2021. The applicant had attempted to make enquiry about payment of benefits and to ascertain whether or not housing benefit could be paid directly to him but was unsuccessful in receiving information about that. In the circumstances, there was no information before the Tribunal to enable it to conclude that the significant arrears which had arisen were as a result of any delay or failure in the payment of any relevant benefit;
15. The Tribunal asked to be addressed in relation to the Pre-action Protocol in relation to rent arrears now in effect in relation to tenancies in terms of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. Mr Turnbull pointed out that the AT6 form was served upon the Respondents prior to those regulations coming into force. Despite that, after they did come into

force, and before raising the proceedings, he did, on behalf of his client, forward a letter to the Respondents drawing attention to the Form AT6 which had been served, drawing attention to the rent arrears which were then in the region of £11,000 and encouraging contact to be made with a proposal for payment of the rent arrears and ongoing rent. A booklet from the Scottish Government entitled Private Rented Sector Tenant Support was forwarded with that letter. The respondents were also encouraged to contact their local Citizens Advice Bureau for assistance. The representations submitted by the respondent Nicola Boyd made reference to advice having been received from Citizens Advice although it could not be ascertained when any such advice was obtained and whether it was as a result of this letter. In any event, Mr Turnbull submitted that steps had been taken to comply with the Pre-action Protocol;

16. The rent statement submitted by the applicant indicated that the monthly rental payment was £575 although, in the period between 9<sup>th</sup> November 2017 and 9<sup>th</sup> February 2019 this was shown as being £500. Mr Turnbull advised that the Respondents had intimated a defect in the property, apparent wind ingress, which resulted in their heating bills increasing. The Applicant accepted that work was required to the roof of the property and that work was instructed and undertaken. Pending that being completed, the Applicant agreed a reduction in rental payments of £75 per month to reflect the defect and any increased heating costs on the part of the Respondents. It was noted, however, that despite this reduction being agreed, payment of rent was still inconsistent and the arrears increased from £1,545 as at 9<sup>th</sup> November 2017 to £3,570 as at 9<sup>th</sup> February 2019;

## **FINDINGS IN FACT**

17. The Tribunal found the following facts to be established:-
- a) The Applicant is the owner and landlord of the Property and the Respondents are the tenants;
  - b) The tenancy commenced on 9<sup>th</sup> September 2014. The tenancy was an assured tenancy under the 1988 Act;
  - c) The rent payable is £575 per month. The rent has not been increased throughout the duration of the tenancy although, between November 2017 and February 2019 was reduced to £500 per month to take account of a defect in the Property;
  - d) The Respondents have been in arrears of rent continually since at least June 2015, initially the arrears being low in

amount. Since September 2018, at which point the arrears amounted to £2,025, the arrears have consistently increased.

- e) As at the date of the application to the Tribunal rent arrears amounted to £11,531.03; as at the date of the Case Management Discussion the rent arrears amounted to £11,756.48;
- f) A notice in terms of section 19 of the 1988 Act (commonly referred to as a form AT6), dated 22<sup>nd</sup> July 2020 was served upon the Respondents. This gave notice that the Applicant was seeking recovery of possession of the property on grounds 8, 11 and 12 of Schedule 5 to the 1988 Act. This notice intimated that proceedings would not be raised before 9<sup>th</sup> February 2021;
- g) On 25<sup>th</sup> February 2021 an application for an order for payment of rent arrears and an application for eviction from the Property were presented to the Tribunal;
- h) A notice in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the relevant local authority;
- i) Both at the date of service of the form AT6 and as at the date of the Case Management Discussion at least 3 months rent lawfully due from the tenant was in arrears;
- j) The Respondents have persistently delayed paying rent which had become lawfully due;
- k) Some rent lawfully due from the Respondents was unpaid on the date on which the proceedings for possession began and was in arrears at the date of service of the Form AT6;

## **REASONS FOR DECISION**

18. The arrears of rent in this case are substantial and longstanding. The Tribunal was advised that, as at the date of the Case Management discussion the arrears amounted to £11,756.48. That equates to unpaid rent for a period in excess of at least 20 months. The arrears had been increasing for a number of years. There was no information before the Tribunal to provide any explanation for this on the part of the respondents;

19. The Tribunal, of course, required to enquire as to whether or not any arrears were as a result of any delay or failure in the payment of any relevant benefit. There was no information before the Tribunal to enable it to conclude that that was the case;
20. While the AT6 form intimated to the Respondents was not in conformity with the revised forms following the introduction of the Coronavirus (Scotland) Act 2020 the AT6, however, still provided the required 6 month period of notice in relation to the raising of proceedings and, as a result, the error in the form of the notice does not affect its validity;
21. The Applicant, notwithstanding that the rent arrears have been in existence for a significant period of time and that the form AT6 was served prior to the Pre-action Requirement regulations being introduced, had taken steps to engage with the Respondents in relation to the arrears, had provided a Scottish Government guidance booklet and had recommended advice be sought from Citizens Advice Bureau. The Tribunal was satisfied that, having regard to the overall circumstances, in particular the longstanding period of arrears, the level of arrears and the lack of any response from the Respondents that the Applicant had taken appropriate steps to engage the Pre-action Protocol;
22. The Tribunal was satisfied that both at the date of service of the form AT6 and as at the date of the Case Management discussion at least 3 months rent lawfully due from the tenant was in arrears (Ground 8);
23. The Tribunal was satisfied that the Respondents have persistently delayed paying rent which had become lawfully due (Ground 11);
24. The Tribunal was satisfied that some rent lawfully due from the Respondents was unpaid on the date in which the proceedings for possession began and was in arrears at the date of service of the Form AT6 (Ground 12);
25. In all the circumstances, the Tribunal considered it appropriate that the order sought by the applicant be granted.

## **DECISION**

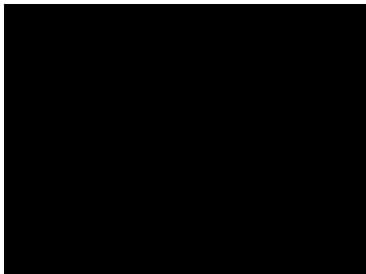
Grants order to Officers of Court to eject the Respondents and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property at 8 St David's Street, Kilpatrick Durham, DG7 3HE and to make the same void and redd that the

Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

Order not to be executed prior to 12 noon on 21 June 2021

### **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.**



**14 May 2021**

---

• **Legal Member/Chair**

---

**Date**