



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section S18 of the Housing (Scotland)  
Act 1988**

**Chamber Ref: FTS/HPC/EV/21/1582**

**Re: Property at 32 Ashfield, Bishopbriggs, G64 3DR (“the Property”)**

**Parties:**

**Mrs Catherine Brown, 4 Croftwood, Bishopbriggs, G64 3DX (“the Applicant”)**

**Miss Nicola McMurray, Mr George McMurray, 32 Ashfield, Bishopbriggs, G64  
3DR (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member) and Mary Lyden (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that an order for repossession should be granted in  
favour of the Applicant**

- Background
- 1. This was the second case management discussion in an application by the Applicant for eviction of the Respondent in terms of S18 of the Housing Scotland Act 1988 (the Act) and grounds 8 and 11 of Schedule 5 of the Act.
- 2. The following was submitted with the application:-
  - a. Copy tenancy agreement between the Applicant and the Respondents dated 29<sup>th</sup> January 2016
  - b. Copy Notice to Quit dated 7<sup>th</sup> December 2020
  - c. Copy At6 dated 7<sup>th</sup> December 2020 stating proceedings will not be raised before 29<sup>th</sup> June 2021
  - d. Certificate of posting and receipt dated 11<sup>th</sup> December and 24<sup>th</sup> December 2020 respectively
  - e. Copy At5 dated December 2015
  - f. S11 notice to Council
  - g. Copy e-mails re payments

- h. Copy rent statement to 29<sup>th</sup> June 2021
3. Intimation of the original the CMD was served by sheriff officer on the Respondent Nicola McMurray and George Murray on 20<sup>th</sup> August 2021 by leaving it at the Property address. At the first CMD on 24<sup>th</sup> September it was noted that the service on the second respondent had not been made correctly as his name was incorrectly designed and the Tribunal indicated it would have to be reserved. The further following matters were identified as needing further clarification as well:-
    - a. The Tribunal wished to hear from the Applicant regarding the validity of the Notice to quit as it appeared not to refer to an ish date and wanted confirmation if the Applicant was relying on S18(6) of the 1988 Act.
    - b. The section 11 notice lodged referred to the wrong piece of legislation and the Applicant was invited to resubmit a fresh s11 notice to the local authority specifying the correct legislation namely the Housing Scotland Act 1988.
    - c. The Tribunal noted that copy e-mails that have been lodged show the letting agent tried to enter into a payment plan with the tenant for payment of the arrears, the Tribunal sought confirmation if any letters or e-mails were sent signposting where the Tenants could obtain support or legal advice?
  4. A direction was sent asking the Applicant to provide further evidence for items b) and c) above.
  5. Prior to the CMD today the tribunal had notification that Sheriff Officers had successfully served the application and the papers on the second respondent at the Property on 8<sup>th</sup> October 2021.
  6. The Tribunal also received a copy of a fresh and corrected S11 notice and confirmation it had been reserved on the local authority.

### **The CMD Discussion**

7. The CMD today proceeded by way of teleconference due to the continued requirement at the current time due to the global pandemic for social distancing. The Convener made introductions, and explained how the CMD would be conducted over the teleconference
8. The Applicant did not attend but was represented by her husband Mr Alan Brown. Neither of the Respondents attended nor were they represented although the Tribunal allowed further time after 10clock for them to dial in.
9. The Tribunal advised Mr Brown that service by Sheriff Officer had been properly made on Mr George McMurray and that there had been no further response from either Respondent in writing.
10. Mr Brown advised that he was seeking an order for eviction and advised that there has been no further communication with the Respondents.
11. Mr Brown advised that they have tried to engage with the tenants but there has been no response. He also advised that Mr McMurray used to give Ms McMurray money for rent but this has stopped and the only rent being paid now is half the rent which is coming directly via benefits claimed by Ms McMurray.
12. He advised that he had an up-to-date rent statement from the letting agent and on being asked to submit it forwarded a copy to the Tribunal. This

showed that the rent received from June, August and September was £366.15, and for July it was £360.20. He advised that £325 of that is for housing costs and the balance paid towards the arrears however he confirmed that as the rent is £650 a month the arrears are increasing and not reducing.

13. He further explained that it was the letting agent who offered help and signposted the tenants to apply for universal credit but he understands from DWP that the first Respondent received some money for housing costs in 2020 which she did not pass on to the Applicant despite the fact this money was for her rent. He confirmed that the Respondents will not respond to phone calls from the letting agent and there has been no communication from either of them regarding the arrears or offers to pay. He also noted that Mr McMurray is a taxi driver and he believes and has seen him currently working.
14. After a short break to allow him to check the up to date position with the letting agent Mr Brown confirmed that the rent for October has not been paid in full either and as the Applicant was awarded £3,800 in an action for rent arrears with the Tribunal earlier this year, the total outstanding today was £6,951.85
15. The Tribunal also discussed the matter of the notice to quit and Mr Brown confirmed that if there was an issue with this he was relying on S18(6) of the 1988 Act and the fact the grounds of eviction he is relying on were stated in full in the lease.
16. Finally Mr Brown read out some e-mails sent by the Letting Agent which dated from March 2020 and which confirmed that the letting agent had offered assistance to the tenants and signposted services which could help them in the pandemic. He explained that he had tried to send these to the Tribunal but it appeared that as they were contained in a link they could not be opened.

## **Findings in Fact**

1. The Applicant and Respondents have entered into a short assured tenancy of the Property from 29<sup>th</sup> January 2016 to 29<sup>th</sup> July 2016.
2. The Applicant is the Landlord and served a Form AT5 on the Respondent who is the Tenant prior to the creation of the tenancy.
3. The Tenancy is a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988.
4. The rent is £ 650 per calendar month.
5. The Applicant has served by recorded delivery, a Notice to quit and AT6 notice dated 7<sup>th</sup> December 2020 on the Respondents giving notice that she required possession of the Property by 29<sup>th</sup> June 2021.
6. The AT6 notice specifies that the landlord is relying on Ground 8 and Ground 11 of Schedule 5 of the 1988 Act.
7. The Grounds of eviction including Ground 8 and ground 11 are fully set out in the tenancy agreement.
8. The arrears of rent due at 7<sup>th</sup> December 2021 amounted to £3,800.
9. The Arrears of rent at today's date are £6,951.85
10. The Respondents who are the tenants have not vacated the property or responded to the Notice to Quit or AT6 notice.
11. The Respondents have been served notice of this application and have made no representations regarding this application.

12. The Tribunal accepts it is reasonable for the order of eviction to be granted.

### **Reasons for Decision**

13. The Applicant has entered into a Short Assured Tenancy with the Respondent which in terms of clause 15 and the schedule to the tenancy agreement, the grounds of possession are set out in full and include Ground 8 “that both at the date of the service of the notice under s19 of the 1988 Act and at the date of the hearing at least three months’ rent lawfully due from the tenant is in arrears” and Ground 11 “that the tenant has persistently delayed paying rent which has become lawfully due.”
14. In terms of the tenancy agreement the Respondents agreed to pay £650 rent per month. The Applicant successfully obtained an order for payment from the Respondents for rent in the sum of £3800 by order granted on 23<sup>rd</sup> February 2021. Since 11<sup>th</sup> January 2021 to September 2021 a further sum has accrued of £2,968.38 and Mr Brown confirmed verbally today that in October a further partial payment only of rent was made in the sum of £366.15.
15. The Tribunal accepts the evidence given by Mr Brown which was clear and credible and supported by the documentation lodged with the application and in response to the Direction. The amount of arrears exceeds three months both at the date of serving notice and at the date of this hearing. Mr Brown confirmed that the Applicant’s letting agent have offered advice and support to the tenants and tried to set up a payment plan but the Respondents are no longer communicating with the letting agent or the landlord.
16. The Tribunal accepts that the notices required under S19 of the 1988 Act have been validly served and that this action is competent. S18 (6) of the Act permits an application of eviction to be made provided notice has been given under S19 (the AT6 notice) and the lease specifies the grounds relied on. The lease does specify ground 8 and 11 and the grounds are met by reason of the Respondent being more than 3 months in arrears and the Respondents persistently delaying payment of the full rent for the last year.
17. The Tribunal also finds in the absence of any submissions by the Respondents that it is reasonable to grant an order for possession given the level of arrears, the fact the arrears are continuing to accrue and that this is not the result of a failure or delay in receiving benefits. The benefits paid directly to the letting agent are apparently based on the first respondent’s income, the second respondent has a job and has not made any payment towards the rent or arrears for over a year.

- **Decision**

An order for repossession is granted.

### **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.

**Jan Todd**

**28<sup>th</sup> October 2021**

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**Legal Member/Chair**

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**Date**