



**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/20/1858**

**Re: Property at 11 Annfield Gardens, Stirling, FK8 2BJ (“the Property”)**

**Parties:**

**E.D.M. Landscaping Limited, Orchardhead, Blair Drummond, Stirling, FK9 4UP (“the Applicant”)**

**Miss Karen Morrison, 11 Annfield Gardens, Stirling, FK8 2BJ (“the Respondent”)**

**Tribunal Members:**

**Yvonne McKenna (Legal Member) and Mary Lyden (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession/eviction is granted**

**Background**

1. This is an application for an order for possession in relation to an assured tenancy in respect of the Property. The application was lodged with the Tribunal on 3<sup>rd</sup> September 2020 together with the following documentation: -
  - Letter of Authority by EDM Landscaping Limited for the application to be signed by the applicant’s representative/agent and for the representatives to act in relation to the application
  - Copy tenancy agreement
  - Copy Notice to Quit and AT6 Notice both dated 31<sup>st</sup> March 2020
  - Evidence of Service for Notice to Quit and AT6 Notice served by recorded delivery on 31<sup>st</sup> March 2020 and proof of delivery royal mail tracking stating these were signed for by K Morrison at 11.06am on 4<sup>th</sup> April 2020
  - Section 11 Notice to local authority dated 20<sup>th</sup> August 2020
  - Rent payment ledger.

2. The Applicant seeks an order for possession under Ground 8 of Schedule 5 of the Housing (Scotland) Act 1988. This is on the basis that the tenant is at least 3 months in arrears of rent both on the date on which the notice of intention to seek possession of the Property was served and at the date of the hearing.
3. At the date that the application was lodged the rent arrears were said to be £6500.
4. In an exchange of communication between the Applicant and the Tribunal prior to the application being accepted the Applicant stated that the cover letter accompanying the application made reference to a previous decision of the Tribunal under reference FTS/HPC/CV/19/3515. The landlord in the tenancy agreement is stated as Hugh Cullens. The specification of Hugh Cullens as landlord was “defective” as he entered into the Tenancy Agreement in the capacity as agent for EDM Landscaping. The Applicant stated that it was accepted by the Tribunal that a lease exists notwithstanding the defect within the contractual agreement.
5. The application was accepted by the Tribunal on 18<sup>th</sup> September 2020.
6. A Case Management Discussion (CMD) took place on 29<sup>th</sup> October 2020 by teleconference. The Applicant was represented by Mr. Andrew Cullens of Jardine Donaldson solicitors. The Respondent was personally present.
7. The Respondent sent in to the Tribunal just before the CMD lengthy submissions dated 28<sup>th</sup> October 2020 together with an itemised index and 53 photographs setting out her position in relation to various outstanding repairs at the Property which she maintained evidenced her poor living conditions there.
8. At the date of the CMD the decision in relation to an application for payment under section 16 of the Housing (Scotland) Act 2014 was awaited. This application was determined by the Tribunal under Chamber Reference; FTS/HPC/CV/19/3515. The decision was dated 3<sup>rd</sup> November 2020. The Order of the Tribunal was issued on 7<sup>th</sup> December 2020. The order granted was an order for payment in the sum of £6000 being arrears of rent as at August 2020.
9. The Applicant on 3<sup>rd</sup> November 2020 forwarded to the Tribunal a copy handwritten letter from the Respondent dated 2<sup>nd</sup> November 2020 stating; -  
“Dear Hugh,  
Due to the fact that repairs have not been done and I consider the property not habitable and unsafe I am now vacating the property 11 Annfield Gardens, Stirling and returning 3 keys.  
K Morrison”. The Applicant stated that an eviction order was still sought to put the matter beyond doubt

### **The Hearing**

10. The Hearing took place by teleconference due to the confusion caused by the COVID-19 pandemic. The Tribunal members and parties dialled into the

teleconference hearing from separate locations. The Applicant was represented by Mr. Andrew Cullens solicitor, Jardine Donaldson solicitors. The Respondent was personally present.

11. Immediately before the Hearing the Respondent's solicitor e-mailed the Tribunal in the following terms: -

"Our client: Karen Morrison

Dear Sirs

On behalf of our above named client in the above case, due for a hearing today, we have been asked to confirm to you that the keys to the property were returned by our client to the landlords by recorded delivery on 1st November 2020.

Subsequent to the meeting on 28th October, the landlord's solicitor made no attempt to deny that the landlord had not carried out the necessary repairs.

Our client vacated the property as soon as she could, and has submitted 53 photographs to the Tribunal as evidence that the repairs were not done.

Regards Alan B Cox,

Associate Solicitor

Barton & Hendry

Solicitors

Fleming House

Tryst Road

Cumbernauld

G67 1JW"

12. There was a slight delay in the tribunal commencing in order that the e-mail could be circulated to the Tribunal members and to parties. The Tribunal accordingly commenced at 10.30am
13. The Legal Member read out to parties the e-mail received and the letter forwarded to the Applicant by the Respondent when the keys were returned.
14. The Respondent agreed that she had paid no rent at all since 1<sup>st</sup> August 2019. She agreed that at the date of the service of the AT6 that rent arrears were due of £4000. She agreed that the rent arrears due as at today's date amounted to £8500. She maintained however that she opposed the order for possession as the necessary repairs had not been done and that she had a legal right to withhold rent due.
15. The Applicant sought the order for possession. He pointed out that Ground 8 of Section 18(6) and Schedule 5 to the 1988 Act was a mandatory Ground and the Tribunal had no discretion in the matter.
16. He said that the issues of the withholding of rent had already been fully dealt with in the context of the payment action referred to above.
17. The Respondent said that she intended to appeal the same. The Legal Member pointed out that the 30-day period had already expired in respect of which permission to appeal could be sought from the Tribunal. She told the Respondent that these issues had already been ruled on by the Tribunal and that this action related exclusively to the order for possession.
18. The Respondent confirmed that she had not experienced any change in her financial circumstances and that if the repairs were done the rent would have been paid.

19. There was no suggestion that the rent arrears were due to any difficulties in relation to benefit payments.
20. The Respondent agreed that she had already vacated the Property.

### **Findings in Fact**

21. (i) Parties entered into an assured tenancy agreement in respect of the Property on 18<sup>th</sup> April 2016.
- (ii) the tenancy commenced on 23<sup>rd</sup> April 2016 until 22<sup>nd</sup> April 2017 and monthly thereafter.
- (iii) The rent was £500 per calendar month
- (iv) Form AT6 and Notice to Quit were served upon the Respondent by Recorded Delivery on 31<sup>st</sup> March 2020
- (v) The Notices were signed for by the Respondent on 4<sup>th</sup> April 2020
- (vi) The tenancy agreement provided for the lease to be brought to an end in terms of Ground 8 under Section 18(6) and Schedule 5 of the 1988 Act
- (vii) The AT6 Notice specifies the ground of repossession in full-Ground 8 and is valid in its terms
- (viii) Form 11 was served on the Local Authority on 20<sup>th</sup> August 2020.
- (ix) the AT6 Notice terminated the tenancy.
- (x) As at the date of service of the AT6 notice there were in excess of 3 months' rent outstanding
- (xi) As at the date of the Hearing there was in excess of three months' rent outstanding.
- (xii) 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.

### **Reasons for Decision**

22. The Tribunal was satisfied that Ground 8 was established and that the rent was not outstanding as a consequence of a delay or failure in the payment of a relevant benefit. Ground 8 is a mandatory ground. The Tribunal had no option but to grant the order sought.

### **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**

10<sup>th</sup> December 2020

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**Legal Member/Chair**

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**Date**