



**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/20/1931

**Re: Property at No 4 Craichie Cottages, Parton, Castle Douglas, DG7 3NP (“the
Property”)**

Parties:

**Mr Oscar Yerburgh, Barwhillanty, Parton, Castle Douglas, DG7 3NS (“the
Applicant”)**

**Ms Cheryl Irvine, No 4 Craichie Cottages, Parton, Castle Douglas, DG7 3NP
 (“the Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined to make an order for repossession against the
Respondent**

- 1 By application to the Tribunal the Applicant sought an order for repossession against the Respondent under section 18 of the Housing (Scotland) Act 1988.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 1st December 2020. Due to the ongoing restrictions arising from the Covid-19 pandemic the Case Management Discussion was directed to take place by tele-conference.
- 3 On 27th October 2020 the Respondent was served with a copy of the application together with notification of the date, time and location of the Case Management Discussion by Sheriff Officers.

Case Management Discussion

- 4 The Case Management Discussion took place by teleconference on 1 December 2020. Mr Turnbull, Solicitor of Gillespie Gifford and Brown LLP appeared on behalf of the Applicant. The Respondent was not present. The Legal Member noted that she had been served with the application paperwork together with the date and time of the Case Management Discussion and details for joining the tele-conference. It was further noted that she had submitted a time to pay application in response to a conjoined application CV/20/1933. The Legal Member therefore considered that the Respondent was evidently aware of the proceedings and therefore determined to continue with the Case Management Discussion in her absence.
- 5 Mr Turnbull invited the Tribunal to grant the application. He confirmed that arrears had increased to £7109.10 with no payments having been made by the Respondent since the application was lodged. The grounds for repossession were therefore met. There had been no contact from the Respondent and no proposals for payments, despite efforts by the Applicant to engage. The Legal Member noted the reference to housing benefit in the aforesaid time to pay application and queried whether this could have caused the arrears. Mr Turnbull explained that due to a lack of engagement from the Respondent, the Applicant was not aware of any outstanding housing benefit claims. The first he had heard about the Respondent being in receipt of housing benefit was when he received the time to pay application. He did not know the extent of her circumstances. Mr Turnbull explained that it appeared the house was simply not suited for the Respondent's needs and he expected she would be seeking alternative accommodation.

Findings in Fact and Law

- 6 The parties entered into a Tenancy Agreement dated 24 February 2017 which commenced on 1st March 2017 for a period of six months until 31 August 2017. The tenancy continued on a monthly basis thereafter.
- 7 The tenancy was a Short Assured Tenancy as defined by section 32 of the Housing (Scotland) Act 1998 ("the 1988 Act").
- 8 The Tenancy Agreement makes provision for the tenancy to be terminated on grounds 8, 11 and 12 of Schedule 5 of the 1988 Act.
- 9 The Respondent has been served with Form AT6 dated 19th February 2020 citing grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 as the grounds upon which the Applicant seeks repossession. The Form AT6 was served by recorded delivery mail on 19 February 2020 and accepted by the Respondent on 20 February 2020.

- 10 The Form AT6 complies with the requirements of section 19 of the Housing (Scotland) Act 1988 and is in the prescribed form.
- 11 The rent due under the said Tenancy Agreement is £475 per month.
- 12 As at the date of service of the Form AT6, rent arrears in the sum of £1,796.80 were outstanding.
- 13 As at the date of the Case Management Discussion arrears in the sum of £7109.10 were outstanding.
- 14 The arrears of rent are not due to any failure to pay housing benefit or its equivalent.
- 15 The provisions of ground 8 of Schedule 5 of the Housing (Scotland) Act 1988 have been met. The Tribunal is obliged to grant the order for repossession.

Reasons for Decision

- 12 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Tribunal noted that the application paperwork had been served upon the Respondent by Sheriff Officers. She had not taken the opportunity to make written representations regarding the application, nor had she attended the Case Management Discussion, despite being requested to do so and being provided with the details to access the teleconference facility. The Tribunal noted that she had submitted a time to pay application in the conjoined application for payment of rent arrears under Case Reference CV/20/1933 so was clearly aware of the proceedings.
- 13 The Applicant sought an order under section 18 of the Housing (Scotland) Act 1988 and had served the Respondent with a Form AT6 notice of his intention to raise proceedings for possession under section 19 of the said Act. The Applicant had also served a Notice to Quit terminating the tenancy between the parties as at 1 April 2020. On the basis that the Tenancy Agreement made provision for the tenancy to be terminated on the grounds upon which the Applicant sought repossession, there was no requirement to consider the Notice to Quit and therefore it did not form part of the Tribunal's considerations in its determination of the application.
- 15 The Applicant relied upon ground 8 of schedule 5 of the said Act as the primary basis for the application for repossession. Ground 8 is a mandatory ground. If the Tribunal is satisfied that at least three months rent lawfully due is in arrears both at the date of service of the Form AT6 and the date of the Case Management Discussion it must grant an order for repossession,

provided the arrears are not due to any failure to pay housing benefit or its equivalent.

- 16 The Tribunal accepted based on the Applicant's written submissions that the rent due under the terms of the tenancy agreement between the parties was £475 per month and that at least three months rent was unpaid when the Form AT6 was served. The Tribunal further accepted based on the submissions from Mr Turnbull at the Case Management Discussion that the arrears had now increased to £7109.10. There was no evidence before the Tribunal to suggest that the arrears of rent were due to any failure to pay housing benefit or its equivalent. Whilst the Respondent had made mention of housing benefit in her time to pay application she had not sought to put forward that issue by way of a defence to the application in this case and had not sought to contradict any of the information submitted by the Applicant. The Tribunal therefore found that the provisions of ground 8 had been met.
- 17 For the avoidance of doubt and on the basis of its findings in fact the Tribunal was also satisfied that the provisions of grounds 11 and 12 which relate to unpaid rent and persistent non-payment had been met. However on the basis that ground 8 had been established the Tribunal did not require to consider the question of the reasonableness of granting the order. The Tribunal noted that this was not an application where the amendments introduced by the emergency coronavirus legislation would apply, the notices having been served prior to the implementation of that legislation on 7 April 2020.
- 18 The Tribunal therefore made an order for repossession in respect of the property.

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.

Ruth O'Hare

Legal Member/Chair

1 December 2020

Date