

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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 (“the 1988 Act”) and Rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)**

**Chamber Ref: FTS/HPC/EV/18/3009**

**Re: Property at 8 Glendevon Place, Kirkcaldy, Fife, KY2 6YN  
 (“the Property”)**

**Parties:**

**Mrs Elizabeth Morrison or Givens, 18 Bandon Avenue, Kirkcaldy, Fife, KY1 3BT  
 (“the Applicant”)**

**Fife Renewables Innovation Centre, Ajax Way, Leven, Fife, KY8 3RS  
 (“the Applicant’s Representative”)**

**Mrs Gillian McLeary, 8 Glendevon Place, Kirkcaldy, Fife  
 (“the Respondent”)**

**Tribunal Member:**

**Susanne L. M. Tanner Q.C. (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) was satisfied that Ground 8 in Part I of Schedule 5 to the 1988 Act was established by the Applicant, in that both at the date of service of the notice under Section 19 of the 1988 Act relating to the proceedings for possession and at the date of the hearing, at least three months’ rent lawfully due from the tenant is in arrears; that rent arrears were not a consequence of a delay or failure in payment of relevant housing benefit or universal credit; and made an order for possession in terms of Section 18(3) of the 1988 Act.**

## Reasons

### 1. Procedural Background

1.1. The Applicant's Representative made an application to the tribunal on 8 November 2018 in terms of Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act") and Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").

1.2. The Applicant sought the Respondent's eviction from the Property in terms of Section 18 of the 1988 Act under Grounds 8, 11 and 12 of Schedule 5 to the 1988 Act.

1.3. The Applicant lodged with the Application:

1.3.1. A paper apart entitled "Section 5: Possession/ Eviction Grounds".

1.3.2. a copy of the Short Assured Tenancy agreement dated 7 June 2016;

1.3.3. a copy of the AT5 Notice;

1.3.4. a copy of the Notice to Quit;

1.3.5. a copy of the Section 33 Notice dated 25 July 2018;

1.3.6. a copy of a Section 19 'AT6' notice dated 25 July 2018 with proof of service dated 26 July 2018;

1.3.7. Section 11 notice sent to the local authority;

1.3.8. Copy letter from Applicant to Respondent dated 23 May 2018;

1.3.9. Copy letter from Applicant to Respondent dated 11 June 2018;

1.3.10. Copy bank statements of the applicant from February 2018 to September 2018.

1.4. The Application was accepted for determination by a tribunal on 30 November 2018. Both parties were notified by letters dated 10 December 2018 of the date, time and place of Case Management Discussion ("CMD") in relation to the Application on 10 January 2019. The Respondent was invited to make written representations in response to the Application by 28 December 2018. Both parties were advised that they were required to attend the CMD. The parties were

advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this will not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.

1.5. The Respondent did not submit any representations or make any contact with the tribunal.

**2. CMD: 10 January 2019 at 1130h, George House, New Volunteer House, 16 East Fergus Place, Kirkcaldy**

2.1. Ms Rosalyn Thomson from the Applicant's Representative attended the CMD on behalf of the Applicant.

2.2. The Respondent did not attend the CMD and made no contact with the tribunal's administration or venue. However, the Respondent attended the venue after the CMD had concluded (see below).

2.3. The tribunal noted that the Short Assured Tenancy was signed by both parties on 7 June 2016. The initial term was for the period 26 May 2016 to 26 May 2017. Since then the lease has tacitly been renewed on a monthly basis. The rent payable is £420 per calendar month payable monthly in advance on the date of entry and thereafter on or before 28<sup>th</sup> of each month.

2.4. Ms Thomson confirmed that the rent has remained at £420 per calendar month to date.

2.5. Ms Thomson referred to the Applicant's bank statement from 1 February 2018 to 3 September 2018 which shows:

2.5.1. On 12 February 2018 a payment of £420 which was said to be the payment due on 28 January 2018. The payment is shown as deposit of clearings items from and then an account number is given.

2.5.2. On 8 March 2018, a payment of £400, which is said to be a part payment of the rent due on 28 February 2018. It is shown as "inter account transfer Givens".

2.5.3. On 6 April 2018, a payment of £420, in respect of the rent due on 28 March 2018, shown as "Deposit of clearing items".

- 2.6. Ms Thomson advised that since 6 April 2018 there have not been any further payments made by the Respondent.
- 2.7. The AT6 notice is dated 25 July 2018 and was delivered on 26 July 2018. It refers to a paper apart which was not in the tribunal's papers but was provided by Ms Thomson at the CMD. It specified that possession was sought on the basis of Grounds 8, 11 and 12.
- 2.8. The rent arrears as at 26 July 2018 (the date of service of the AT6 notice) were £2120.00. On the basis of rental payments of £420 per calendar month, the rent was over three months in arrears as at 26 July 2018.
- 2.9. Ms Thomson advised that the rent arrears have continued to accrue as there have been no further payments from the Respondent. As at the date of the CMD hearing on 10 January 2019 the rent arrears are £3780.00.
- 2.10. There is no information before the tribunal to suggest that there has been any delay or failure in payment to the Respondent of housing benefit or relevant universal credit. The tribunal was satisfied that any rent arrears are not a consequence of a delay or failure in the payment of housing benefit or relevant universal credit.
- 2.11. The tribunal Chair stated that a decision had been made today and that an order for possession would be made. The Applicant's representative confirmed that she and the Applicant were aware that as the tribunal made the decision to make an order for possession in the absence of the Respondent, the Respondent could make an application for recall in terms of Rule 30 of the 2017 Rules within 14 days of the decision, which would prevent any further action being taken by any other party to enforce the decision for which recall is sought until the application is determined by the tribunal under Rule 30(9).
- 2.12. The CMD concluded.
- 2.13. Attendance by Respondent after the CMD hearing**
- 2.14. After the tribunal had made its decision to make an order for possession and the CMD had concluded, the Respondent appeared in the venue at 11.49.
- 2.15. The Respondent stated that she was late because she could not find the venue. However, she also stated that she had travelled by taxi from the Property and suggested that the taxi driver had also got lost. When questioned further by the tribunal chair about her travel arrangements she admitted that had not left the Property until after 11.30h.

2.16. The tribunal chair explained that the hearing had started at 11.30 and had concluded and that a decision had already been made to grant an order for possession of the Property in terms of Ground 8 of Schedule 5 to the Housing (Scotland) Act. The tribunal chair took some time to explain to the Respondent what that meant and to go back over the submissions and documents which had been referred to during the CMD before the decision was reached. The tribunal chair explained that she was satisfied that the requirements for the order had been met. The tribunal chair also explained the right to appeal on a point of law and the fact that there was a 30 day period before the Applicant could seek to enforce the order.

2.17. The Respondent stated that she was getting no help from the Council despite telling them that she was homeless and that her solicitor had told her that she does not deal with housing law. The Respondent stated that she got a letter from the Council on 1 June 2018 stating that her Housing Benefit had been suspended without the right to appeal. She did not know how much she had received prior to that. However, she accepted that she had been in rent arrears to the Applicant from March 2018 onwards and she did not seek to suggest that the rent arrears related to a delay or failure to pay Housing Benefit to which she was actually entitled. The Respondent repeated again that she did not know what to do as she had already registered as homeless and because she had not been given a house by the Council, she had remained in the Property. She stated that she understood that she would be evicted on or after 10 February 2019 as a result of the tribunal's order. The tribunal chair told the Respondent that a notice had been sent to the Council by the Applicant's Representative advising them of these proceedings and that after the order was issued she would be able to seek any advice she requires from a solicitor, Shelter or Citizens Advice Scotland, or another voluntary organisation; and to speak to the Council again.

3. The tribunal makes the following findings-in-fact:

3.1. There is a short assured tenancy between the Applicant and the Respondent for the initial period 26 May 2016 to 26 May 2017 and thereafter the tenancy has continued by tacit relocation on a calendar monthly basis.

3.2. Rent is £420 per calendar month, payable in advance on the 28<sup>th</sup> of each calendar month.

3.3. The Section 19 notice (AT6) was served on 26 July 2018.

3.4. The AT6 notice specified that the Applicant was intending to raise proceedings for possession of the Property on Grounds 8, 11 and 12 of Schedule 5 to the Housing (Scotland) Act 1988 ("the 1988 Act").

3.5. As at 26 July 2018 there were rent arrears of £2120.00.

3.6. As at the date of service of the Section 19 notice on 26 July 2018 there were at least 3 months of rent arrears, namely £3780.00

3.7. From 26 July 2018 to date the rent was £420 per calendar month.

3.8. As at the date of the hearing on 10 January 2019 there were in excess of three months' rent arrears lawfully due from the Respondent to the Applicant.

3.9. The rent arrears are not a consequence of a delay or failure in the payment of Housing Benefit or relevant universal credit.

### **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.**

**10 January 2019**

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**Susanne L. M. Tanner Q.C.**  
**Legal Member/Chair**