



**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.**

Reference number: FTS/HPC/EV/21/1532

Order granted on 2 November 2021

Property: Flat 2/2, 43 Fairburn Street, Glasgow, G32 7QG

Parties:

Biggar & Hay Ltd, a company incorporated under the Companies Acts and having their Registered office at Suite 411 Baltic Chambers 50 Wellington Street, Glasgow, G2 6HJ  
("the Applicant")

Bartoz Daniel Derlatka and Malgorzata Monika Bartoszak, residing at Flat 2/2, 43 Fairburn Street, Glasgow, G32 7QG ("the Respondents")

**Tribunal Members:**

**Paul Doyle (Legal Member)**  
**Angus Lamont (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") makes an order for possession of the Property in terms of section 18 of the Housing (Scotland) Act 1988 under Ground 8 of schedule 5 to the 1988 Act.**

**Background**

The Applicant sought recovery of possession of the Property in terms of section 18 of the Housing (Scotland) Act 1988 under Ground 8 of schedule 5 to the 1988 Act. The Applicant had lodged with the Tribunal Form E. The documents produced were a Tenancy Agreement, a Notice to quit, served on 7 October 2020, together with a notice under s.11 of the Homelessness (Scotland) Act 2003.

## **Case Management Discussion**

A case management discussion took place by telephone conference at 2.00pm on 2 November 2021. The Applicant was represented by Ainslie Morrison, solicitor. Mr B D Derlatka appeared for both respondents.

## **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and the Respondents entered into a short-assured tenancy Agreement for the Property dated 27 June 2017. The respondents took entry to the property on 28 June 2017.
2. The rent in terms of the Tenancy Agreement was £435 per month.
3. The respondent have not paid any rental since August 2019 despite remaining in the property. At the date the application was submitted there were arrears of rent totalling £2,380, which is more than 3 months' rent. By 7 October 2020 there were rent arrears of £5,655.00, which is more than three months rent. At today's date there are rent arrears of £11,310.00.
4. On 7 October 2020 the applicant served a notice to quit, a form AT6 and a notice under s.11 of the Homelessness (Scotland) Act 2003 on the respondents. On 18 June 2021, the applicant submitted an application to the tribunal.
5. The Applicant seeks recovery of possession of the Property Ground 8 of schedule 5 to the 1988 Act. The rental was 13 months in arrears at the date the application was submitted. Rental is now 26 months in arrears.
6. The respondents offer no resistance to this application. Mr Derlatka told us that he agreed with everything said by the applicant's solicitor and that no rental has been paid since August 2019. He told us that the Respondents hope to move out of the property in the next two weeks.
7. There is no suggestion that the respondents are in arrears of rent either wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. It is not argued that it is unreasonable to grant an order for repossession of the property. The weight of reliable evidence indicates that it is reasonable to grant an order for repossession of the property.

## **Reasons for the Decision**

The Tribunal determined to make an Order for possession of the Property in terms of section 18 of the Housing (Scotland) Act 1988. The basis for possession set out in

Ground 8 of schedule 5 to the 1988 Act is established. The respondents offer no defence to the application and candidly admit that they have allowed 26 months arrears of rental to accumulate. For these reasons, the Tribunal determined to grant an Order for possession.

### **Decision**

For the foregoing reasons, the Tribunal determined to make an Order for possession of the Property in terms of section 18 of the Housing (Scotland) Act 1988 under Ground 8 of schedule 5 to the 1988 Act.

### **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.**

**Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.**

**[REDACTED]**  
Paul Doyle

**2 November 2021**

**Legal Member**