



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 18(1) of the Housing  
(Scotland) Act 1988**

**Chamber Ref: FTS/HPC/EV/22/2217**

**Re: Property at Flat 0/2, 184 Earl Street, Scotstoun, Glasgow, G14 0BU (“the  
Property”)**

**Parties:**

**Mr Ian McCormick, 349 Alderman Road, Glasgow, G13 3SS (“the Applicant”)**

**Zara Nolan and Michael Nolan, Flat 0/2, 184 Earl Street, Scotstoun, Glasgow,  
G14 0BU (“the Respondent”)**

**Tribunal Members:**

**George Clark (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 the application should be decided without a Hearing  
and granted an Order for Possession of the Property.**

**Background**

By application, dated 6 July 2022, the Applicant sought an Order for Possession of the Property under Section 18 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Ground relied on was Ground 8 of Schedule 5 to the 1988 Act, namely that both at the date of service of Notice under Section 19 of the 1988 Act relating to the proceedings and at the date of the Hearing, at least three months’ rent lawfully due from the Tenant is in arrears. The application was also made under Grounds 11 and 12 of Schedule 5 to the Act.

The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Parties commencing on 11 February 2012 and, if not terminated on 11 August 2012, continuing until terminated by either Party. The rent payable was £425 per month. The Applicant also provided copies of a Rent Statement showing arrears as at 1 June 2022 of £4,875.75, no rent having been paid since March 2022 and, prior to that, since August 2021, a Form AT6 Notice dated 9 June 2022, advising the

Respondent that the Applicant intended to raise proceedings for possession under Grounds 8, 11 and 12 of Schedule 5 to the 1988 Act and that proceedings would not be raised before 24 June 2022, with evidence of service on the Respondent of the Notice on the same day. The Applicant also provided the Tribunal with copies of letters from the Applicant's letting agents dated 15 March 2021, 8 April 2021, 23 April 2021 and 30 September 2021, as required by the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.

A later Rent Statement provided by the Applicant showed arrears as at 28 June 2022 of £5,100.75. £200 had been paid on 25 June 2022, being the only payment received since 9 March 2022.

On 13 September 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 4 October 2022. The Respondent did not make any written representations to the Tribunal.

### **Case Management Discussion**

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 25 October 2022. The Applicant was represented by Miss Alexandra Wooley, of Bannatyne Kirkwood France & Co, solicitors, Glasgow. The Respondent, Miss Nolan, was present. The Respondent, Mr Nolan, was not present or represented. The Applicant's representative advised the Tribunal that the arrears currently stood at £4,715. Recently, intermittent fortnightly payments had been made, but they were not sufficient to cover the rent or the arrears. She asked the Tribunal to grant an Order for Possession without a Hearing. She was advised by her client that he was not satisfied that any Payment Plan would be adhered to, a previous one having failed. She pointed out how long it would take to clear the arrears, assuming the current level of payments was continued. There had been arrears on the account since March 2020 and the Applicant was looking to sell the Property as he could no longer afford the factoring and repair costs, given the rent arrears.

Miss Nolan told the Tribunal that she was not married and that the Respondent Mr Nolan was the father of her two children, living with her and aged 11 and 10, but that he did not contribute to the rental payments. The rent had been manageable until the COVID-19 pandemic. She did not dispute the arrears and was trying her best to make fortnightly payments and had had set up a Standing Order for £240 per fortnight, which would cover the monthly rent and reduce the arrears by £55 per month. She worked at McDonalds in the city centre and hoped to be able to increase the payments after Christmas. She had not contacted Glasgow City Council regarding being re-housed, as she understood that they would not help her because she is not technically homeless.

### **Reasons for Decision**

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

Section 18(1) of the Act states that the Tribunal shall not make an Order for Possession of a house let on an Assured Tenancy except on one or more of the Grounds set out in Schedule 5 to the Act. By Section 18(3) of the Act, if the Tribunal is satisfied that any of the Grounds in Part I of Schedule 5 is established, the Tribunal shall make an Order for Possession.

The present application is made under Ground 8 of Part I of Schedule 5 and also under Grounds 11 and 12 of Part II.

Ground 8 of Schedule 5 to the 1988 Act, as amended by the Coronavirus (Scotland) Act 2020 provides that the Tribunal may grant an Order for Possession if, both at the date of the service of the Notice required under Section 19 of the 1988 Act (the Form AT6 Notice) and at the date of the Hearing at least three months' rent lawfully due from the tenant is in arrears and the Tribunal is satisfied that it is reasonable to grant the Order.

The Tribunal was satisfied from the letters that had been sent to the Respondent between 15 March 2021 and 30 September 2021, that the requirements of The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 had been met by the Applicant.

The Tribunal was also satisfied that, both at the date of service of the Form AT6 Notice and at the date of the Case Management Discussion the arrears of rent lawfully due by the Respondent to the Applicant exceeded three months.

The Tribunal noted that the rent had been in arrears of at least £2,000 since March 2021 and that the arrears were currently £4,715. The letter from the Applicant's letting agents to the Respondent of 30 September 2021 stated that a payment plan agreed in June 2021 had not been complied with by the Respondent. The Tribunal understood the impact that an Order for Possession would have on the Respondent and her family, but, in deciding whether it is reasonable to issue an Order for Possession, the Tribunal must consider the position of both the tenant and the landlord and, if the current fortnightly payments were maintained, it would be more than 6 years before the arrears were cleared. Even if the payments rose to £100 per month, it would take almost 4 years.

Having carefully considered all the evidence before it, the Tribunal decided on balance that it would be reasonable to grant an Order for Possession of the Property.

The application had also been made under Grounds 11 and 12 of Schedule 5 to the 1988 Act but, as the Tribunal had decided that the requirements of Ground 8 had been met, it was not necessary to consider further the application under Grounds 11 and 12.

The Decision of the Tribunal was unanimous.

### **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.**

# George Clark

**Legal Member/Chair**

**25 October 2022**

**Date**