



**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/19/2807**

**Re: Property at 88 Cambusdoon Place, Kilwinning, Ayrshire, KA13 6SN (“the  
Property”)**

**Parties:**

**Steven Easton Residential Limited, 2 Newfield Drive, Dundonald, Ayrshire, KA2  
9EW (“the Applicant”)**

**Ms Melissa Maryann Tudhope, 88 Cambusdoon Place, Kilwinning, Ayrshire,  
KA13 6SN (“the Respondent”)**

**Tribunal Members:**

**Mary-Claire Kelly (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined to grant an order for recovery of possession.**

**Background**

1. By application received on 9<sup>th</sup> September 2019 the applicant sought an order for recovery of possession in respect of the property in terms of grounds 8 and 11 in Schedule 5 of the Housing (Scotland) Act 1988.
2. The present application was heard jointly with a second application seeking an eviction order in terms of section 33 of the Act (FTS/EV/19/2811) and an application seeking payment of outstanding rent arrears at the property (FTS/HPC/CV/19/2814).

11. The Tribunal sought to establish whether the respondent denied that full rent was due for the period when the property was affected by disrepairs. After some discussion the respondent clarified that her position was that did she not accept liability for the period between the boiler breaking and it being repaired. She advised that she had sought assistance from the private rented sector team at the council and had reported the repairs to the applicant's office. She advised that her children had had to move in with her mother for a period as the property had been uninhabitable.
12. The applicant accepted that there had been an issue with the repairs but advised that the repair had been dealt with reasonably. He advised that any delay had been due to difficulties accessing the property. In his view the respondent was using the repairs to avoid paying rent which was due. He pointed out that there were extensive arrears before the respondent alleged and issue with disrepair.
13. The parties agreed that if rent was abated in full for the five month period, specified by the respondent then the outstanding rent arrears would amount to £3865.53.
14. The applicant indicated that in the interests of resolving matters, he would agree to reduce the amount sought to £3865.53 to reflect a reduction from the amount due at the date of the cmd (£6,365.53) by £2,500, representing five month's rent.
15. The respondent accepted liability for rent arrears of £3865.53. The Tribunal made efforts to ensure that the respondent fully understood what she was admitting.

### **Findings in Fact**

16. Parties entered into a short assured tenancy in respect of the property.
17. The lease commenced on 15<sup>th</sup> June 2016. The initial term of the lease was for six months. Thereafter the lease continued on a monthly basis.
18. The rent payable in terms of the lease was £500 per month.
19. The respondent accepts liability for rent arrears of £3865.53 as at the date of the hearing.
20. A valid notice to quit and AT6 had been served by the applicant on 11<sup>th</sup> March 2019.

21. The respondent had more than 3 months' arrears of rent as at the date of service of the AT6 and the date of the cmd.
22. The respondent had persistently delayed in paying rent.

### **Reasons for Decision**

23. Section 18 of the Housing (Scotland) Act 1988 states:

*3) If the First-tier Tribunal is satisfied that any of the grounds in Part I of Schedule 5 to this Act is established then, subject to [subsections (3A) and (6)]<sup>3</sup> below, the Tribunal shall make an order for possession.*

*(3A) If the First-tier Tribunal is satisfied—*

*(a) that Ground 8 in Part I of Schedule 5 to this Act is established; and*

*(b) that rent is in arrears as mentioned in that Ground as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit,*

*the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.*

23. Ground 8 states:

*"Both at the date of the service of the notice under section 19 of this Act relating to the proceedings for possession and at the date of the hearing or the date of the case management discussion, whichever is the earlier, at least three months' rent lawfully due from the tenant is in arrears."*

24. During the course of the hearing the respondent accepted liability for outstanding arrears of £3865.53.
25. The respondent had accepted that the rent statement lodged by the applicant was an accurate reflection of the payments she had made.
26. The form AT6 was served on the respondent on 11<sup>th</sup> March 2019.
27. The Tribunal preferred the applicant's evidence that the monthly rent due was £500 as corroborated by the terms of the lease. The Tribunal found the respondent's position that the rent had been reduced to £475 per month at the same time as she signed a lease specifying the figure of £500 to lack credibility.

28. Three months' rent amounted to £1500. In light of the respondent's admissions and the rent account the Tribunal was satisfied that three month's rent was outstanding at the date of service of the AT6 and at the hearing and accordingly the ground had been established.

29. The respondent raised no issues in respect of the arrears being due to unpaid housing benefit payment. Accordingly the Tribunal required to grant the order as sought.

#### Decision

30. The Tribunal determined to grant an order for recovery of possession.

#### 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.**

Mary-Claire Kelly

Legal Member/Chair

11<sup>th</sup> November 2019  
Date