

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

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**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 of the Housing (Scotland) Act 1988 and Section 48 of the Housing (Scotland) Act 2014**

**Chamber Ref: FTS/HPC/EV/18/2183**

**Re: Property at 92 Mannsfield, East Calder, West Lothian, EH53 0JE (“the Property”)**

**Parties:**

**Mr Mark Jordan, 49 Finlay Avenue, East Calder, West Lothian, EH53 0RP (“the Applicant”)**

**Ms Kirsty McWilliams, 92 Mannsfield, East Calder, West Lothian, EH53 0JE (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal 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 granted without a hearing and made an Order for Possession.**

**Background**

By application, received by the Tribunal on 21 August 2018, the Applicant sought an Order for Possession of the Property. The application was accompanied by copies of a Short Assured Tenancy Agreement between the Parties, commencing on 21 April 2016 and continuing on a year-to-year basis until terminated by either party, Form AT6 Notices to each Respondent, dated 11 July 2018, specifying the grounds for seeking possession as Grounds 8,11 and 12 of Schedule 5 to the Housing (Scotland) Act 1988 with proof of service by sheriff officer on 11 and 12 July 2018, and a Notice to Quit, dated 16 February 2018, bearing to have been sent by First Class Recorded Delivery. A Rent Statement as at 21 June 2016 was also provided to the Tribunal. It showed arrears of rent as at that date of £5,081.49. The rent payable under the lease was £600 per month.

On 8 November 2018, the Tribunal advised the Parties of the date, time and venue of a Case Management Discussion and invited the Respondent to make any written representations no later than 26 November 2018.

The second-named Respondent made written representations by e-mail dated 22 November 2018. She explained the reasons for the accumulation of rent arrears and asked that any order for eviction be granted on the ground that the Applicant wished to sell the Property, which she understood to be the case. She also asked that any order be dated after the Christmas holidays, due to the health of one of her three children.

### **The Case Management Discussion**

A Case Management Discussion was held at Riverside House, 502 Gorgie Road, Edinburgh, on the afternoon of 29 November 2018. The Applicant was represented by Leona Duff of Aberdeen Considine and Company, solicitors, 2<sup>nd</sup> Floor, Elder House, Elder Street, Edinburgh. The Respondent was not present or represented at the Case Management Discussion, having intimated on 22 November 2018 that she was unable to take time off work to attend.

The Applicant's representative told the Tribunal that no payments of rent had been received since the lodging of the application and that the arrears now stood at £8,081.49. She sought an Order for Possession on Ground 8 of Schedule 5 to the Housing (Scotland) Act 1988 ("the 1988 Act"). She also intimated that her instructions were to oppose the request of the second-named Respondent that any Order for Possession be dated later than the earliest date on which it could be enforced, which would be 30 December 2018.

### **Reasons for Decision**

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Regulations") provides that the Tribunal may do at a case management discussion anything 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 and that it would decide the application without a hearing.

The Tribunal held that it had no power to grant an Order for Possession on any ground other than that stated in the application, so could not accede to the second-named Respondent's request that any Order be granted on the ground that the Applicant wished to sell the Property.

Section 18 of the 1988 Act requires the Tribunal to make an Order for possession if satisfied that any of the grounds in Part 1 of Schedule 5 to the 1988 Act is established. Ground 8 is in Part 1 of the Schedule and applies where both at the date of service of the notice under Section 19 of the 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.

The Tribunal was satisfied from the evidence before it that the necessary Form AT6 Notice had been served on each Respondent and that the rent had been three months in arrears both at the dates of service of the AT6 Notices (11 and 12 May 2018) and at the date of the Case Management Discussion. Accordingly, the requirements of Section 18 of the 1988 Act had been met and the Tribunal was bound to grant the Order.

The Tribunal was sympathetic to the position set out by the second-named Respondent in relation to possible eviction during the Christmas holiday period, but

was unable, other than with the consent of the Applicant, to postpone the date on which the Order could be enforced, namely 31 days after the date of the Case Management Discussion at which the Decision to make the Order was made. Such consent by the Applicant had not been forthcoming.

The Tribunal having granted the application under the mandatory Ground 8 of Schedule 5 to the 1988 Act, it was unnecessary to consider the application under the discretionary Grounds 11 and 12.

### **Decision**

The Tribunal decided to grant the application without a hearing and to make an Order for Possession 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.**

**Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.**

**Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.**

George Clark

**Legal Member/Chair**

29 November 2018  
**Date**