



**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/18/0269

**Re: Property at Sycamore Treehouse, Arbroath Road, Forfar, DD8 2RL (“the
Property”)**

Parties:

**Mr Stephen Dalzell, 6 Piperdam Drive, Piperdam, By Dundee, DD2 5LY (“the
Applicant”)**

**Mr Johann Ivester, Mrs Angela Ivester, Sycamore Treehouse, Arbroath Road,
Forfar, DD8 2RL (“the Respondent”)**

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the order for recovery and possession should be
granted in favour of the Applicant**

Background

1. This case should be read in conjunction with FTS/HPC/CV/18/00062. The group reference is GTS/HPC/GP/18/0322.
2. This is an application in terms of Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The Applicant is seeking an order for recovery of possession in terms of grounds 8, 11 and 12 of the Housing (Scotland) Act 1988.

3. The parties entered into a Short Assured Tenancy between 1st September 2012 until 31st August 2013. The rent payments of £975 were due on or before the 1st day of each month in advance.
4. The Tribunal had before it the following documents:
 - a) Application dated 29th January 2018 and a second application amending from Rule 66 to Rule 65 on 12th March 2018
 - b) Tenancy agreement between the parties signed 7th September 2012 with the commencement of the tenancy on 1st September 2012 for a 12 months period until 31st August 2013 and on a month to month basis thereafter.
 - c) Form AT5 signed by the parties on 7th September 2012.
 - d) Form AT6 dated 4th December 2017 with execution of service by Sheriff Officers on 7th December 2017.
5. The Previous CMD was continued to allow the Respondent to attend and to allow the Respondent to lodge a section 11 notice in the correct form. The Respondent had contacted the Housing and Property Chamber on the morning of the hearing to say that he had been unwell and was unable to attend the hearing that day. He also indicated that he had a serious health condition.
6. The Respondent is in receipt of Housing Benefit which totals £415.40 per four weeks (a monthly equivalent of £450.02). This leaves a short fall of £524.80 in rent which is required to be paid by the Respondent.
7. The Applicant had originally sought £7350 plus 8% interest per annum. However during the process the arrears increased and the Applicant's representative amended the amount sought to £8953.60.

Case Management Discussion

8. The Tribunal held a Case Management Discussion ("CMD") on 7th September 2018. The Applicant was not present but had elected for his solicitor to be present to represent him, Ms Machin from Clarity Solicitors. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Tribunal considered the Application. The Respondent sent in an email on the morning of the hearing to state that he would not be able to attend the hearing as he had surgery on 5th September 2018. He confirmed in his email that he had identified another property that he could move into on 22nd October 2018. The Applicant stated that the Respondent had been persistently in arrears of £524.80 per month from October 2016. Thereafter

the arrears increased to the amount of £12599.52 to the date of the Tribunal. The Applicant's solicitor accepted that there had been a miscalculation in the sums due to date. This had been intimated to the Housing and Property Chamber as £13015 but she accepted that £12599.52 was the correct figure due. As this had not been intimated upon the Respondent the sum of an order would be restricted to £8953.60. Ms Machin confirmed that there had been no contact between her client and the Respondent since her firm took over the case in early December 2017. She was unaware of any outstanding Housing Benefit issues but noted that the payments had been constant for some time. She noted that there had been no offers of payment for the arrears or the shortfall in the rent by the Respondent. Ms Machin took an undertaking that the Applicant would not remove the Respondent from the Property before 26th October 2018 which will allow him to move to his new property.

Findings in Fact

9. The parties entered into a Short Assured Tenancy on 7th September 2012 with the commencement of the tenancy on 1st September 2012 for a 12 months period until 31st August 2013 and on a month to month basis thereafter. The lease was signed on 7th September 2012. An AT5 was signed by both parties on the same date as the lease. The rent payments of £975 are due by the 3rd day of each month.
10. The Housing and Property Chamber received an Application on 29th January 2018 and a further application amending from Rule 66 to Rule 65 on 12th March 2018.
11. The Respondent has persistently not made rent payments. There have been more than 3 missed payments. The amount outstanding has risen to £12599.52 to, beyond that which was sought in the application. The arrears have resulted from non-payment of the rent payments after Housing Benefit has been deducted.
12. There has been payment of Housing Benefit to the Applicant since October 2016 at a consistent rate of £415.40 per four weeks.

Reasons for Decision

13. The Tribunal was satisfied that there were no other issues of reasonableness before them and that the notices had been served in an appropriate manner. The Respondent has persistently been in arrears and is currently in arrears in

excess of three months' rent. As a consequence the Applicant was entitled to be granted the Order for recovery of possession.

Decision

14. The Applicant is entitled to for an order of 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.

Gabrielle Miller

Legal Member/Chair

Date

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