

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



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 19 of the Housing (Scotland) 1988 (“The 1988 Act”)**

**Chamber Ref: FTS/HPC/EV/18/3444**

**Re: Property at Flat C, 19 Millhill, Musselburgh, EH21 7RH (“the Property”)**

**Parties:**

**Hartfield Homes (Musselburgh) Limited, Pentland House, Damhead, Midlothian, EH10 7DP (“the Applicant”)**

**Mr Bradley Cummings, Flat C, 19 Millhill, Musselburgh, EH21 7RH (“the Respondent”)**

**Tribunal Members:**

**Anne Mathie (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) dismissed the application dated 17 December 2018 by the applicant, made in terms of Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.**

- **Background**  
This application started as a Rule 66 application dated 17 December 2018. Along with the application form were lodged a Copy Land Certificate, Lease, AT5 and AT6. The Paper Apart to the application provided eviction grounds under part 5 of the application form as being grounds 8, 11 and 12 contained in Schedule 5 to the 1988 Act. The covering letter enclosed with the application and dated the same date stated ‘For the avoidance of doubt although there are two grounds available: that on the natural expiry of the lease and also of the arrears of rent, the primary purpose of the application is brought upon the basis of outstanding rent.’ Also in the case papers are a copy of the Section 11 Notice and Certificate of Execution of Service by Sheriff Officers. The Tribunal wrote to the applicant’s agents on 18 December 2018 requesting a copy of the tenancy agreement and a copy of the AT5. A

copy of the tenancy agreement and an incomplete AT5 were received. The Tribunal wrote again on 8 January 2019 requesting further information regarding the incomplete AT5 and the incomplete Notice to Quit. The Tribunal, in the same letter, asked for submissions in relation to the ish date in the Notice to Quit and asked about the section 33 Notice. The Tribunal also requested submissions in relation to Part 3 of the AT6 which appeared to be deficient as it merely repeated the terms of Grounds 8, 11 and 12. The applicant's agents were also advised that they could have 2 separate cases proceeding in terms of Rule 65 and Rule 66 respectively. The applicant's agents responded by email dated 15 January 2019. They advised that they wished the case to proceed in terms of Rule 65. They also made submissions in relation to the other points raised by the Tribunal in their letter of 8 January 2019. Of particular relevance was the written submissions in respect of the ish date contained in the Notice to Quit and the submissions in relation to the apparent deficiencies in the AT6 (see below). A rent statement was also provided but did not contain a running total of rent arrears but rather a list of what was due and what was paid each month. It wasn't clear at any point in time how much rent was owing. A Case Management Discussion was assigned for today and intimated to parties. The respondent was asked to submit and written responses by 12 March 2019 but none had been received by the Tribunal.

- The Case Management Discussion

The Case Management Discussion took place today. In attendance for the applicant was Mr Ewan Bruce from Thorley Stephenson Solicitors on behalf of the Principal Agents, Douglas Harvey, also from Thorley Stephenson was in attendance as an observer. Joseph Carmichael who is an employee of the applicant was also in attendance. The respondent Bradley Cummings appeared on his own behalf. Mr Cummings confirmed that he had not lodged any written representations. The Tribunal went through the terms of the paperwork with Mr Bruce. For today's purposes the AT5 and purported Section 33 Notice were not really of relevance now that the applicant's had settled on proceeding under Rule 65. Mr Bruce did not have a copy of the tenancy agreement from those instructing him. He had no further submissions but adopted the submissions of those instructing him in relation to the Notice to Quit and the particulars contained in the AT6. In brief, the reason the ish date was stated to be 13 December 2018 and not 7 December 2018 was based on the failure by the tenant to pay rent for more than three months and the date of the ish had therefore been given as two weeks after the date of Notice to Quit. On further questioning the Tribunal asked for oral submissions as to whether a Notice to Quit was necessary in the present circumstances where Grounds 8, 11 and 12 of Schedule 5 were detailed verbatim in the tenancy agreement. As Mr Bruce had not had sight of the tenancy agreement he was at a disadvantage in this regard but submitted that in the circumstances a Notice to Quit was not necessary. The only written submissions made by the applicant's agents in relation to Part 3 of the AT6 was that a previous decision of *V & E Properties (Dumfries) Ltd v Ian West* (and cited to the applicant's agents in the Tribunal's letter to them of 8 January 2019) '*seems only to be available on the Tribunal's website and has not been published to the profession in any of the usual channels, for*

*instance, the Scottish Courts Webpage or in the Green's Weekly Digest. In any event we would submit that the background circumstances in this case are that the tenant has not paid full rent for the vast majority of the period of his tenancy, in the course of 2018 there were three months in which he paid no rent whatsoever, he has been notified from time to time by the Landlord of the burgeoning arrears, all as shown in the attached statement of the arrears of rent, that the tenant well knows the precise amount of arrears outstanding and that formal provision of the information is unnecessary to the disposal of the case.'* These submissions were adopted by Mr Bruce at today's Case Management Discussion. The Tribunal raised the content of the rent statement included in their papers which was not at all clear. It stated an amount due and an amount received in respect of each calendar month but the Tribunal would have expected to see a running total of rent arrears. It also appeared from the rent statement that a rent increase had been made in approximately July 2018. In terms of Clause 5 of the tenancy agreement a rent increase could only be made by giving 1 months written notice to the tenant and the Tribunal had no paperwork to show that any such notice had been given. Mr Bruce provided an up-to-date rent arrears statement showing running totals and showing that at the time of service of the AT6 on 26 November 2018 the amount of £3775 was due and that today's date the sum of £5525 was due. For today's purposes he would be prepared to work on the rent amount of £500 per calendar month in the absence of any evidence in connection with the rent increase in July 2018.

In response to the application, Mr Cummings confirmed that he had had some difficulty in meeting the rent due to some difficult circumstances. He advised that he was in receipt of Universal Credit for the past year and that 2 payments of his wife's salary had been mistakenly noted by the Universal Credit system and this is why he had been unable to pay rent in March 2019. He confirmed the rent arrears had been built up over a period of time. He did not have any firm plans for the future as regards the tenancy.

- Findings in Fact

The applicant and respondent had entered into a tenancy agreement initially from 8 November 2013 to 7 May 2014 and the tenancy would continue on a month by month basis thereafter if not brought to an end by either party on 7 May 2014.

The respondent has been struggling to pay his rent over a period of time. An AT6 and Notice to Quit had been served on the respondent by Sheriff Officers on 26 November 2018.

The Notice to Quit was defective as it stated the wrong ish date but a Notice to Quit was not necessary in the circumstances of this particular case.

The AT6 was invalid as it did not contain the prescribed information at Part 3.

- Reasons for Decision

The 1988 Act at Section 19(2) provides:

*'The First-tier Tribunal shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground and particulars of it are specified in the notice under this section; but the grounds specified in such a notice may be altered or added to with the leave of the Tribunal.'*

In this case the mere repetition of the wording of Grounds 8, 11 and 12 in Schedule 5 to the 1988 Act without any further particulars rendered the AT6 invalid. In the case of *Mountain v Hastings* (1993) 25 HLR 427 in relation to an equivalent case under the Housing Act, the Court of Appeal decided that there must be a valid notice before the power can be exercised.

Eviction/repossession cases are of the utmost gravity and the Tribunal would expect statutory requirements to be adhered to.

In making its decision the Tribunal had regard to all the papers, the prior written submissions of the applicant's agents and the oral submissions made by parties today.

- Decision  
The Tribunal dismissed the action 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.**

A.Mathie

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Legal Member/Chair

15 March 2019  
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Date