



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under under Section 16 of the Housing
(Scotland) Act 2014**

Chamber Ref: FTS/HPC/EV/18/2359

Re: Property at 97 Hazel Avenue, Culloden, Inverness, IV2 7JX (“the Property”)

Parties:

Mrs Coleen Macdonald, Reverend Kenneth MacDonald, 20 Garrabost, Isle of Lewis, HS2 0PW (“the Applicants”)

Mrs Ivy Mvula-Berry, 97 Hazel Avenue, Culloden, Inverness, IV2 7JX (“the Respondent”)

Tribunal Members:

Helen Forbes (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted.

Background

1. 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 Applicants are seeking an order for possession of the Property in terms of s18 of the Housing (Scotland) Act 1988 relying on Ground 8 of Schedule 5 to the said Act
2. The Tribunal had before it the following documents:
 - (i) Application dated 13th September 2018.
 - (ii) Tenancy agreement between the parties dated 25th and 27th November 2005.
 - (iii) Rent account statements
 - (iv) Correspondence from the Applicants to the Respondent dated 24th January 2012

- (v) Correspondence from the Applicants to the Respondent dated 2nd January 2018
- (vi) Section 11 Notice by Landlord of Proceedings for Possession
- (vii) Form AT6 dated 20th August 2018.
- (viii) Proof of Recorded Delivery of Form AT6 signed for and dated 21st August 2018
- (ix) Certificates of Intimation upon the Respondent dated 10th September and 9th October 2018.
- (x) Written intimation of motion to increase sum sought dated 2nd October 2018.

Case Management Discussion

3. The Applicants were present, accompanied by their representative, Laura McCarthy, Munro & Noble Solicitors. The Respondent was not present. The Tribunal was satisfied that the Respondent had received notification of the Case Management Discussion and that in terms of Rule 29, the case could be heard in the absence of the Respondent.

Ms McCarthy said there had been no contact from the Respondent in relation to this case. The case was brought under Ground 8, and, given that at least three months rent was outstanding at the date of service of the AT6 notice under section 19 of the Act, and at the date of today's hearing, the particular ground is a mandatory ground and no discretion is allowed to the Tribunal unless there is an issue with certain benefits. As far as the Applicants are aware there is no issue with failure in the payment of relevant housing benefit or universal credit. The Applicants said the Respondent was in receipt of some benefits when the tenancy began in 2005. Payment of rent always came directly from the Respondent. As far as the Applicants are aware, the Respondent is in employment, and at least one of her children is in employment.

Ms McCarthy moved the Tribunal to grant an order for possession of the Property.

Findings in Fact

4. (i) The parties entered into a Short Assured Tenancy on 1st December 2005.
- (ii) The rent was initially £500 per month. This was increased to £520 per month in February 2012.
- (iii) Rent arrears began to accumulate from September 2017. Thereafter, rental payments were sporadic and did not cover the rent due each month. There has been no payment of rent since January 2018.
- (iv) Rent lawfully due to the Applicants, in terms of the lease between the parties, has not been paid by the Respondent.
- (v) Arrears in the sum of £3980 were outstanding at the time of service of the AT6 Notice on 20th August 2018.
- (vi) Arrears in the sum of £5440 were outstanding at the date of the Case Management Discussion on 15th November 2018.

Reasons for Decision

5. The Tribunal was satisfied that there was at least three months rent due at the date of serving notice in terms of section 19 of the 1988 Act, and at the date of the Case Management Discussion. Ground 8 of Schedule 5 to the 1988 Act requires the Tribunal to grant an order for possession in these circumstances, provided that rent is not in arrears as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit. There was no information before the Tribunal to suggest that the Respondent is in receipt of relevant housing benefit or universal credit, or that delay in payment of these benefits has been responsible for the failure to pay rent lawfully due.

Rule 17 of the Rules states 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 required in order to make a decision without scheduling a hearing.

Decision

6. The Tribunal determined that the requirements set out in Ground 8 of Schedule 5 to the Housing (Scotland) Act 1988 were met and the order for possession of the Property was granted.

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.

Helen Forbes

Legal Member/Chair

15th November 2018

Date