

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

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**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/18/3197**

**Re: Property at 1/1 Corthie Court, Stoneywood, Denny, FK6 5GU (“the  
Property”)**

**Parties:**

**Link Housing Ltd T/A Link2Let, Link House, 2c New Mart Road, Edinburgh,  
EH14 1RL (“the Applicant”)**

**Mr Mark Rowles, 1/1 Corthie Court, Stoneywood, Denny, FK6 5GU (“the  
Respondent”)**

**Tribunal Members:**

**Melanie Barbour (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that**

**Background**

An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 65 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for recovery of possession in relation to an assured tenancy under the Housing (Scotland) Act 1988 by the Applicant against the Respondent in relation to the subjects 1/1 Corthie Court, Stoneywood, Denny.

The application contained a copy of

- the Tenancy Agreement;
- AT5
- AT6 Form
- Notice to Quit

- together with a certificate of service by sheriff officer of the Notice to Quit and AT6
- Section 11 Notice together with evidence of service; and
- a copy of a rental statement.

The Applicant's representative, Ms Preece, from Messrs Harper Macleod LLP, attended on behalf of the Applicant.

There was no appearance from the Respondent.

Notice of the Hearing together with a copy of the application and confirmation that the Respondent could make written representations in response to the application, had been served on the Respondent on 4 February 2019. No written representations had been received.

### The Hearing

The Applicant's representative advised the Applicant was the management agent for the landlord, Carrongrove NHT 2011 LLP, and they were entitled to bring these proceedings on behalf of the landlord as their agent.

The Applicant's representative explained that they were seeking an order for eviction under Grounds 8, 11 and 12 of Schedule 5 of the 1988 Act as the Respondent was in arrears of rent for more than 3 months and this continued to be the case as at today's date.

The tribunal had sight of the tenancy agreement in the name of the landlord and Respondent and noted that it commenced on 27 February 2018.

Clause 5 provided that rent payable was £469.52 per month subject to annual review of the rent amount.

The tenancy agreement at clause 16 provided for termination of the tenancy, and at clause 16.1.3 and stated that "*We (or our agent) may terminate the tenancy at any time by serving you with the following notice, if one or more of the grounds set out in Appendix A to this tenancy agreement are satisfied: (i) a notice to quit; and (ii) a Form AT6 indicating that we intend to raise proceedings to recover possession of the accommodation.* Appendix A set out a number of the grounds specified in Schedule 5 of the 1988 Act including Grounds 8, 11 and 12 and those grounds were set out in full in the Appendix.

An AT6 Form had been served on the Respondent by sheriff officers. The AT6 Form set out that the landlord intended to seek eviction under Grounds 8, 11 and 12 and narrated the reasons why eviction under those grounds was sought. A Notice to Quit had also been served on the Respondent it was dated 13 June 2018 and provided that the Respondent required to remove from the subjects on 1 September 2018. This notice had also been served by sheriff officers. A certificate of service for both of these notices had been included in the application.

The Applicant's representative advised that when the application was lodged with the tribunal the rent arrears were £3,513.86, which was a sum in excess of three months' rent arrears. She advised that as at today's date the rent arrears were still outstanding and had in fact increased to £4,517.82.

The last payment made by the Respondent towards the rent had been made on 3 December 2018, and the last payment prior to that date had been made on 2 July 2018. There had been no other attempts made by the Respondent to repay the rent or arrears.

The Applicant had lettered and tried to visit the Respondent about the non-payment of the rent, in their letters they had offered to refer the Respondent to their Benefits Service or make a referral to Money Advice. There had however been no contact from the Respondent.

The Applicant's representative advised that there were no benefits claims outstanding for the Respondent. In all of the circumstances she was therefore seeking an order under Ground 8 the mandatory ground.

### Findings in Fact

The Tribunal have found the following facts to be established:

A tenancy agreement was entered into between the landlord and the Respondent for the property. It was entered into on 27 February 2017.

The Applicant was the management agent for the landlord.

Clause 5 provided that rent of £469.52 was due per calendar month in advance.

Clause 16.1.3 provided a right to seek to recover possession of the property, under an application being made to the tribunal relying on certain grounds set out of the Schedule 5 of the 1988 Act, including grounds 8, 11 and 12.

That the rental statement showed that at the date that the AT6 was served on the Respondent at least three months arrears of rent was outstanding.

The AT6 Notice had been served on the Respondent and there was evidence of service of this document.

That a Notice to Quit had been served on the Respondent instructing him to vacate the property on 1 September 2018, the ish date.

That at today's date the Respondent was more than 3 months in arrears of rent.

That there did not appear to be any outstanding benefit issues which had caused the delay in the payment of rent

## Reasons for Decision

Section 18 of the 1988 Act provides that:-

18 Orders for possession.

(1) The First-tier Tribunal shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act.

...

(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.

...

(6) The First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless—

(a) the ground for possession is Ground 2 or Ground 8 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9, Ground 10, Ground 15 or Ground 17; and

(b) the terms of the tenancy make provision for it to be brought to an end on the ground in question.

...

On the basis of the evidence before the tribunal, I found that an assured tenancy existed. That a valid AT6 and notice to quit had been served on the Respondent. The Respondent was in arrears of rent which exceeded three months' rent as at the date of the service of the AT6 Notice and as at today's date, the date of the hearing.

In those circumstances, I consider that I am required to make an order under Ground 8 unless the arrears were as a delay in relation to the payment of relevant housing benefit or relevant universal credit. There was no information before the Tribunal that there were any such issues regarding these benefits.

In addition I note that there appeared to have been attempts made to assist the Respondent to deal with financial issues however he had failed to make any effort to sort his rent and arrears out.

Accordingly, I consider that I should grant the Order against the Respondent.

## Decision

The Tribunal grants an order in favour of the Applicant against the Respondent, 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.

M Barbour

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Legal Member/Chair

22. 2. 19  
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Date