



**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/18/2821

**Re: Property at Lower Harbour House, Harbour Lane, South Queensferry, EH30
9PT (“the Property”)**

Parties:

**Mr Ranald Mackay, Harbourhead, South Queensferry, Edinburgh, EH30 9PT
 (“the Applicant”)**

**Mr Stuart Noble, Ms Carol Lee, Lower Harbour House, Harbour Lane, South
Queensferry, Edinburgh, EH30 9PT (“the Respondent”)**

Tribunal Members:

Ewan Miller (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 of the Property should be
granted in favour of the Applicant against the Respondent**

Background

The Applicant was the owner of the Property. A previous proprietor of the Property had granted a Lease to the Respondent on 24 March 2006. The Applicant alleged that the Respondent had ceased to pay rent around February 2018. The Applicant sought possession of the Property by way of an application to the Tribunal dated 26 September 2018.

Case Management Discussion

The Tribunal held a Case Management Discussion on 21 January 2019 at Riverside House, 502 Gorgie Road, Edinburgh. The Applicant was present and was represented by Helen Couser of Fife Letting Service. The Respondent was not present or represented.

The Tribunal was satisfied that the case papers had been timeously served by the Tribunal via Sheriff Officers on the Respondent. Accordingly the Respondent knew or ought to have known that the Case Management Discussion was taking place. The correspondence had highlighted to the Respondent that a decision may be taken in his absence. Accordingly the Tribunal was satisfied that it could proceed and could, if it felt it appropriate to do so, make a decision in the absence of the Respondent.

Findings in Fact

The Tribunal found the following facts to be established:-

- The Applicant was the owner of the Property;
- A previous proprietor had granted a lease to the Respondent on 24 March 2006;
- The Respondent had ceased paying rent to the Applicant in February 2018.
- As at the date of the application and the date of the hearing more than three months rent was outstanding
- Ground 8 of of Schedule 5 of the Housing (Scotland) Act 1988 had been established. This was a mandatory ground for eviction.
- The appropriate AT6 had been validly served by Sheriff Officers on the Respondent on 16th August 2018
- In addition to the AT6 a Notice to Quit and s33 notice had been validly served by Sheriff Officers on the Respondent on 22 June 2018.

Reasons for Decision

The Tribunal was satisfied that Ground 8 of Schedule 5 to the Housing (Scotland) Act 1988 had been established. More than 3 months rent was outstanding at the date of application to the Tribunal and at the date of the hearing. As this was a mandatory ground for eviction the Tribunal had no discretion here. There appeared to be no benefit in referring the matter to a full hearing of the Tribunal and the Tribunal was satisfied that it was appropriate to make a decision at the Case Management Discussion

Evidence was produced by the Applicant and his representative that the Respondent had entered in to a lease of the Property in 2006. A summary of arrears showing in excess of 7 months arrears was produced at the application and the Applicant confirmed the arrears had grown further since then as no further payment had been made. The Tribunal had no reason to doubt the veracity of this evidence and no response at all had been forthcoming from the Respondent to rebut this.

The Applicant, who lived next door, advised that Mr Noble of the Respondent remained in the Property. Ms Lee did not appear to be resident although she had given no notice she had removed.

The Tribunal did note that they only had part of the lease in front of them. It had been prepared by previous letting agents who had only kept a copy of the first and last page. It did occur to the Tribunal that there was a possibility that the grounds for eviction had not been narrated in full and therefore the test in RBS v Boyle 1999 may

not have been met. However, the Respondent had not provided any evidence to the contrary and it was a reasonable assumption to make that the grounds would have been narrated. In any event, the Applicant had also validly served a Notice to Quit and s33 Notice and therefore the tenancy had also been terminated on the grounds it had reached its ish date. The front page of the lease was available and this confirmed that the lease was continuing on tacit relocation and two months notice could be given at any time to terminate the lease. The Applicant had done so. Accordingly although the Applicant had sought possession under Rule 65, possession could also be granted under Rule 66. In these circumstances and taking in to account the overriding objective of fairness, the Tribunal was satisfied that it was appropriate to grant the order for possession under Rule 65.

Decision

The Tribunal determined to grant an order for possession against the Respondent in favour of the Applicant

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.

Mr Ewan Miller

Legal Member/Chair

21/1/19

Date