



**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/22/2997**

**Re: Property at Mill Croft, Geddes, IV12 5SB (“the Property”)**

**Parties:**

**Captain Charles James Mackintosh-Walker, Mrs Elizabeth Mackintosh-Walker,  
Geddes House, Nairn, IV12 5QX (“the Applicants”)**

**Mr Ross Duncan, Mill Croft, Geddes, IV12 5SB (“the Respondent”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member) and Frances Wood (Ordinary Member)**

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

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

**Background**

This was an application dated 23<sup>rd</sup> August 2022 brought in terms of Rule 65 (Application for order for possession in relation to assured tenancies) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicants provided with their application copies of the short assured tenancy agreement, section 19 notice (form AT6), Section 11 notice, rent arrears statement, pre-action correspondence and relevant executions of service.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The form AT6 intimated to the tenant that the landlord intended to raise proceedings for possession of the house on grounds 8, 11 and 12 of Schedule 5 to the *Housing (Scotland) Act 1988*.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 2<sup>nd</sup> November 2022, and the Tribunal was provided with the execution of service.

### **Case Management Discussion**

A Case Management Discussion was held at 10:00 on 7<sup>th</sup> December 2022 by Tele-Conference. The Applicants did not participate, but were represented by Mr Swarbrick, solicitor. The Respondent did not participate, nor was he represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

Mr Swarbrick invited the Tribunal with reference to the application and papers to grant the order sought on grounds 8, 11 and 12 of Schedule 5 to the *Housing (Scotland) Act 1988*. The form AT6 narrated rent arrears of £3,600.00 at the time of the notice.

That figure had increased to £6,000.00 as of the date hereof. The monthly rental due in terms of the tenancy agreement is £600.00 per month.

Mr Swarbrick explained that it appeared that the Respondent had abandoned the Property several months ago.

### **Statement of Reasons**

In terms of Section 18(3) of the *Housing (Scotland) Act 1988* as amended by the *Coronavirus (Scotland) Act 2020* ("the Act"), if the Tribunal is satisfied that any of the grounds in Part I of Schedule 5 to the Act is established then, subject to subsections (3A) and (6), the Tribunal shall make an order for possession.

Section 18(3A) of the Act provides that 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.

The Tribunal was satisfied that ground 8 contained in Part 1 of Schedule 5 to the Act had been established, and considered that it was reasonable to make an order for possession. The Tribunal was not satisfied that rent is in arrears as a consequence of

a delay or failure in the payment of relevant housing benefit or relevant universal credit. There was no evidence to establish any such reason for rent arrears.

In terms of Section 18(4) of the Act, if the Tribunal is satisfied that any of the grounds in Part II of Schedule 5 to this Act is established, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

Section 18(4A) of the Act provides that in considering for the purposes of subsection (4) above whether it is reasonable to make an order for possession on Ground 11 or 12 in Part II of Schedule 5 to this Act, the First-tier Tribunal shall have regard, in particular, to the extent to which any delay or failure to pay rent taken into account by the Tribunal in determining that the Ground is established is or was a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit.

The Tribunal was satisfied that grounds 11 and 12 contained in Part 2 of Schedule 5 to the Act had been established, and considered that it was reasonable to make an order for possession. The Tribunal was not satisfied that rent is in arrears as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit. There was no evidence to establish any such reason for rent arrears.

For the above reasons, the Tribunal made an order for possession.

## **Decision**

In these circumstances, the Tribunal made an order for possession of the house let on the tenancy as sought in this application.

## **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.**

Neil Kinnear

07/12/2022

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**Legal Member/Chair**

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**Date**