



**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/23/1892**

**Re: Property at 23 Derby Gate, Bellshill, ML4 1FG (“the Property”)**

**Parties:**

**Kelleigh McRae and Rupinder Rai, 74 Dumgoyne Drive, Glasgow, G61 3AW (“the Applicants”)**

**Gary Straub, 23 Derby Gate, Bellshill, ML4 1FG (“the Respondent”)**

**Tribunal Members:**

**Joel Conn (Legal Member) and Gordon Laurie (Ordinary Member)**

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

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

**Background**

1. This is an application by the Applicants for an order for possession in relation to an assured tenancy in terms of rule 65 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The tenancy in question was an Assured Tenancy (said to be a Short Assured Tenancy) of the Property by Applicants to the Respondent commencing on 6 November 2015 (though the Tenancy Agreement itself made no reference to the second Applicant).
2. The application was dated 8 June 2023 and lodged with the Tribunal on or about that date. This makes the application subject to the *Cost of Living (Tenant Protection) (Scotland) Act 2022*, though insofar as the eviction is considered under Ground 8A there are no additional requirements under that Act.

3. The application relied upon a Notice to Quit dated 10 March 2023, providing the Respondent with notice that the Applicants sought to terminate the Tenancy by 7 June 2023, and a notice in terms of section 19 (also known as an “AT6”) of the Housing (Scotland) Act 1988 dated 10 March 2023. Evidence of service of both of the notices by Sheriff Officer on 13 March 2023 was included with the application.
4. The said AT6 relied upon three grounds under Schedule 5 to the 1988 Act; Grounds 8A, 11 and 12. These grounds relied upon rent arrears of £4,950 being outstanding as at the date of the AT6. The lease for the Tenancy, lodged with the application, disclosed a monthly rent of £550. There were thus nine months of rent arrears said to be due as at the date of the AT6. In advance of the case management discussion, the Applicants’ agent provided an updated rent statement showing the arrears (covering rent due to 31 October 2023) to be £8,800, with the last payment made by the Respondent on 27 May 2022 in regard to the rent due on 1 June 2022. Therefore no rent had been paid for any of the 16 rent payment dates since 1 July 2022 until 1 October 2023.
5. Evidence of a section 11 notice dated 7 June 2023 in terms of the Homelessness Etc. (Scotland) Act 2003 served upon North Lanarkshire Council was provided with the application.

### **The Hearing**

6. On 31 October 2023 at 14:00, at a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting remotely by telephone conference call, we were addressed by the second Applicant (Mr Rai) and the Applicants’ agent, Vikki McGuire, Lettings Manager, Jewel Homes. As of 14:05, there was no appearance by the Respondent (that is, neither he nor anyone on his behalf had dialled in).
7. Our clerk informed us that there had been no contact from the Respondent with the Tribunal. The Applicants’ agent stated that all recent contact with the Respondent had been by text, as he was no longer responding to telephone calls, and that on 6 October 2023 he had responded to a text asking whether he was still in occupation. His response was that he was in occupation and was awaiting the outcome from the Tribunal. We noted that intimation of the application had taken place by the Sheriff Officer instructed by the Tribunal on 27 September 2023. We were thus satisfied that there was no appearance by the Respondent and, in the circumstances, decided to consider the application in full at the CMD in the absence of the Respondent.
8. In regard to the merit of the application, the second Applicant and the Applicants’ agent both provided submissions. We noted:
  - a. The Respondent was understood to be in employment as a train driver.
  - b. He lived alone but had a son, who was believed to be in his early teens, who lived with his mother. At least as of last year, the Respondent’s son was believed to stay over with the Respondent occasionally at the Property.

- c. The Property was a two-bedroom flat, and was not adapted for the Respondent, nor did it have any special characteristic for his use (such as proximity to a support service).
  - d. The Applicants knew of no outstanding benefits application and, given the Respondent's employment, it was thought unlikely he would qualify for benefits.
  - e. When he first fell into the current arrears, the Respondent had made contact saying that he was awaiting an outstanding bonus and would clear the arrears once it was paid. There had thereafter been some discussions on a payment plan, with the Respondent seeking assurance that if arrears were reduced he would not be evicted. All such discussions failed to conclude in an agreement and no payments were made.
  - f. No contact has been made by the Respondent regarding any proposal on payment since the service of the AT6 in March 2023.
  - g. The Respondent had previously fallen into arrears, in particular in September 2021 when the arrears balance reached £2,750. At the time of clearing those arrears, the Respondent had discussed that he would seek assistance from his parents in handling his budgeting but that did not appear to have occurred.
  - h. The Respondent had previously fallen into periods of arrears and non-communication but on those occasions the arrears were eventually cleared and communication restarted.
  - i. The second Applicant and the Applicants' agent met with the Respondent at the Property in 2022. The second Applicant had previously had direct contact with the Respondent. All such contact had been cordial.
  - j. The Respondent had replied to the first pre-action protocol email (of 10 February 2023) with a short response saying that he would address the arrears, but he had not done so. No further response to the pre-action letters had then been received.
9. As stated above, the Applicants' agent provided an updated rent statement prior to the CMD showing arrears to the period ending 31 October 2023 amounted to £8,800 being 16 months' unpaid rent. No payment of rent had occurred at all since 27 May 2022.
10. No order for expenses was sought.

### **Findings in Fact**

11. By written lease dated 2 November 2015 the parties agreed a lease with a start date of 6 November 2015 until 7 May 2016 which would "continue from month to month thereafter until terminated" ("the Tenancy").
12. Under the Tenancy, the Respondent was to make payment of £550 per month in rent in advance to the Applicants on the 1st of each month.
13. On 10 March 2023, the Applicants' agent drafted a Notice to Quit in correct form addressed to the Respondent, giving the Respondent notice that the Applicants wished him to quit the Property by 7 June 2023.

14. 7 June 2023 is an ish date of the Tenancy.
15. In any event, clause 38 of the Tenancy makes provision for the Tenancy being brought to an end on, amongst other grounds, Grounds 11 and 12 of Schedule 5 to the 1988 Act while it is still an assured tenancy in terms of that Act.
16. On 10 March 2023, the Applicants' agent drafted an AT6 form in correct form addressed to the Respondent, giving the Respondent notice in terms of section 19 of the 1988 Act of an intention to raise proceedings for possession in terms of Grounds 8A, 11 and 12 of Schedule 5 to the 1988 Act, all based on there being rent arrears at that date of £4,950 (being nine months of rent arrears) as at the date of the AT6. The AT6 gave the Respondent notice that proceedings would not be raised before 8 June 2023.
17. On 13 March 2023, a Sheriff Officer acting for the Applicants competently served both notices upon the Respondent. The Respondent was thus provided with sufficient notice of the Applicants' intention that the Tenancy was to terminate on 7 June 2023 and that the Applicants sought to evict under the grounds set out in the AT6.
18. On 8 June 2023, the notice period under the Notice to Quit and AT6 having expired, the Applicants raised proceedings for an order for possession with the Tribunal, under rule 65, relying on the arrears still being outstanding; and that it was reasonable to make the order.
19. On 10 February, 17 February and 3 March 2023, the Applicants' agent provided the Respondent with pre-action emails in terms of the relevant regulations, providing the Respondent with details as to his arrears, along with sources of advice and support.
20. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon North Lanarkshire Council on 7 June 2023 on the Applicants' behalf.
21. On 27 September 2023, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondent, providing the Respondent with sufficient notice of the CMD for the application of 31 October 2023.
22. The Applicant seeks to recover the Property in consideration that there are substantial unpaid arrears with no proposal for payment.
23. The arrears of rent as at 31 October 2023 are £8,800, being 16 months of rent arrears.
24. The Respondent's last payment towards rent was on 27 May 2022.
25. The Respondent resides alone at the Property, with only occasional overnight stays by his son. His son is not reliant on the Respondent for accommodation.

26. The Property is not adapted for the use of the Respondent or his son, and is not specially required by the Respondent for any reason, such as proximity to a support agency or place of employment.

### **Reasons for Decision**

27. The application is in terms of rule 65, being an order for possession in relation to assured tenancies. We were satisfied, on the basis of the application and supporting papers, and the oral submissions provided at the CMD, that a valid AT6 had been issued on the Respondent; that the notice period of the AT6 had expired without the breaches being resolved; and that the non-payment of rent remained unaddressed as at the CMD. As at the date of the CMD, the total arrears now amounted to 16 months of rent arrears.
28. We were satisfied from the submissions that there were no known issues of failure or delay in benefit. It was thus appropriate to grant an order in terms of Ground 8A of Schedule 5 to the 1988 Act subject to the test of reasonableness discussed below (which apply in any case to Grounds 11 and 12). The 1988 Act as currently amended requires us to consider whether it is reasonable to make an order for possession under Ground 8A. There were no material circumstances brought to the Tribunal's attention that would suggest it would be unreasonable in the circumstances of 16 months' arrears, and no payments by the Respondent since May 2022. We were satisfied that it was reasonable to grant the application.
29. In regard to Grounds 11 and 12, in all the circumstances of such material arrears and no payments since May 2022, we are satisfied that both grounds are also satisfied (and no different consideration of reasonableness need be considered). Had Ground 8A not been sought, we would have granted eviction (subject to a statutory suspension in terms of the 2022 Act) under both Grounds 11 and 12. We decline to do so as it is unnecessary and, as any such order would be subject to the statutory suspension, it would result in an unclear order.
30. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. We were thus satisfied to grant an order for possession under each of the grounds relative to rule 65.

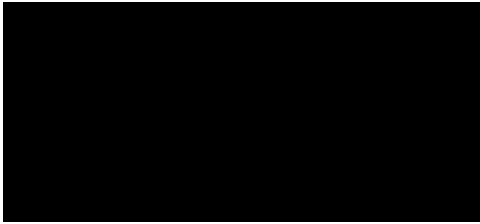
### **Decision**

31. In all the circumstances, we make the decision to grant an order against the Respondent for possession of the Property under section 18 of the *Housing (Scotland) Act 1988*.

### **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.**



31 October 2023

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**Legal Member/Chair**

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**Date**