

**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/23/3965

Re: Property at 164 Dallas Drive, Kirkcaldy, Fife, KY2 6NQ (“the Property”)

Parties:

**Mrs Elaine McFadyen, Mr Murray McFadyen, 79 The Avenue, Lochgelly, Fife,
KY5 9LL (“the Applicants”)**

**Mrs Christine Greig, 164 Dallas Drive, Kirkcaldy, Fife, KY2 6NQ (“the
Respondent”)**

Tribunal Members:

Graham Harding (Legal Member) and Andrew McFarlane (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Applicants were entitled to an order for
possession of the property and the removal of the Respondent from the
property.**

Background

1. By application dated 8 November 2023 the Applicants’ representatives, Innes Johnston LLP, Solicitors, Glenrothes, applied to the Tribunal for an order for the eviction of the Respondent from the property in terms of Grounds 8A, 11, 12 and 13 of Schedule 5 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Applicant submitted a copy of a tenancy agreement, Notice to Quit, Form AT6, Section 11 Notice and Pre-Action Letters from together with other documents in support of the application.
2. By Notice of Acceptance dated 4 January 2024 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 25 January 2024.

The Case Management Discussion

4. A CMD was held by teleconference on 13 March 2024. The Applicants and the Respondent did not attend but the Applicants were represented by Ms Alice McCreadie from the Applicants representatives and the Respondent was represented by her wife Ms Donna Greig.
5. The Tribunal noted that the Respondent had commenced her tenancy of the property on 2 November 2015 and was an assured tenancy under the Housing (Scotland) Act 1988.
6. The Respondent's representative confirmed that the Respondent had been served with a Notice to Quit and Form AT6 dated 28 June 2023.
7. The Tribunal noted that a Section 11 Notice had been intimated to Fife Council on 14 November 2023.
8. Ms McCreadie advised the Tribunal that although the date for paying rent had been changed at the request of the Respondent to the 16th of each month no rent had been paid since October 2022 and the amount of rent due now stood at £8000. 00. Ms McCreadie explained that the Applicants mortgage had increased to £380.11 per month with effect from 1 September 2023. Ms McCreadie said that pre-action letters had been sent to the Respondent on 23 May 2023 and 7 June 2023. Ms McCreadie said she was seeking possession under Grounds 8A, 11 and 12 of Schedule 5 of the 1988 Act. She said that following an inspection and as a result of concerns raised by the Social Work Department regarding the condition of the property due to the number of cats being kept there by the Respondent with faeces and urine rendering one room uninhabitable the Applicants were seeking possession also under Ground 13 of Schedule 5. She also spoke of concerns raised by the Environmental Health Department with regards to household waste left in the garden of the property. Ms McCreadie also spoke of reports of anti-social behaviour on the part of the occupants of the property and referred the Tribunal to the police report submitted with the application.
9. For the Respondent Ms Greig explained that her mother had been prepared to assist her and the Respondent to clear the debt but sadly her mother had died seven weeks previously. Ms Greig went on to say that she was a beneficiary in her late mother's estate and would in due course be able to clear the rent arrears completely once her late mother's house had been sold. Ms Greig was unable to give any indication as to when this would be but hoped it would not take too long. With regards to the number of cats in the property Ms Greig said that there were four and that the Respondent had been given permission to keep one. She denied there had been ten cats there. Ms Greig said that the household waste in the garden had now been

removed. Ms Greig disputed that there was any ongoing anti-social behaviour.

10. For the Applicant Ms McCreadie submitted that it would be likely that it would take about six months for an executry to be in a position to sell a property and given the level of unpaid rent the Applicants were not prepared to give the Respondent more time.
11. Ms Greig advised the Tribunal that the Respondent was aged 42 and suffered from mental health issues of depression and anxiety. Ms Greig said that she was aged 53 and that neither she nor the Respondent were in employment and both were in receipt of Universal Credit. In response to a query from the Tribunal Ms Greig confirmed that the Respondent was in receipt of the Housing element for Universal Credit but that this had not been used to pay rent. Ms Greig said that quite a lot had been spent on the property to bring it back to the condition it had been in at the commencement of the tenancy for handing it back.
12. Ms Greig confirmed that she and the Respondent had been in contact with the Homeless unit at Fife Council and with Shelter. She said that the Council had told them that nothing would be done about rehousing them until an order for possession had been granted.
13. Ms Greig went on to say that the Respondent's health was bad and that she was very depressed and that some days she would take to her bed. Ms Greig confirmed that the Respondent's two children aged 17 and 15 lived with them and that the 15-year-old had recently attempted to take her own life.
14. For the Applicants, Ms McCreadie advised the Tribunal that the Applicants were in their early sixties and the property was their only rental property. She said that the increased mortgage was having a significant adverse financial effect upon them.

Findings in Fact

15. The Respondent commenced an Assured Tenancy of the property on 2 November 2015.
16. A Notice to Quit and Form AT6 under Grounds 8A, 11, 12 and 13 of Schedule 5 of the 1988 Act was served on the Respondent on 28 June 2023.
17. A Section 11 Notice was sent to Fife Council on 14 November 2023.
18. The Respondent has paid no rent since October 2022 and the rent due now amounts to £8000.00.

19. The Respondent is in receipt of the housing element of Universal Credit but has not applied it to pay any rent.
20. At some indeterminate time in the future the Respondent's wife will inherit one half of the net sale proceeds of her late mother's house.
21. The Applicants have to pay a mortgage over the property which increased on 1 September 2023 to £380.11 per month.
22. The failure to receive any rent for the property has had an adverse effect on the Applicants' finances.
23. The Respondent has mental health issues and suffers from depression and anxiety.
24. The Respondent lives in the property with her wife and two teenage children.
25. The Respondent's teenage daughter has recently attempted to take her own life.

Reasons for the Decision

26. The Tribunal was satisfied from the documents submitted and the oral submissions of both representatives that the parties entered into an assured Tenancy that commenced on 2 November 2015. The Tribunal was also satisfied that a valid Notice to Quit and Form AT6 had been served on the Respondent and that proper intimation of the proceedings had been given to Fife Council by way of a Section 11 Notice. The Tribunal was also satisfied that the Respondent had not paid any rent since October 2022 and that the rent now due amounted to £8000.00.
27. The Tribunal was therefore satisfied that procedurally the criteria for granting an order for possession under grounds 8A, 11 and 12 of Schedule 5 of the 1988 Act and for the removal of the Respondent from the property had been met subject to it being reasonable for such an order to be made. In reaching a decision on reasonableness the Tribunal noted that neither party took any issue with the other party's position as stated by them. The Tribunal therefore had to balance the needs and circumstances of the Applicants with those of the Respondent in arriving at a decision. The Tribunal accepted that the Respondent suffered from depression and anxiety however it was not suggested by the Respondent's representative that this would prevent the Respondent finding alternative accommodation and it was confirmed that she had applied to Fife Council and had sought advice from Shelter. The Tribunal also found it difficult to understand how when being paid the housing element of Universal Credit the Respondent had made no attempt over a period of almost eighteen months to pay any rent at all. The Respondent's representative could offer no clear explanation as to why this

was the case and the Tribunal did not accept her explanation that the funds had been spent decorating the property.

28. The Tribunal was satisfied that the increased mortgage cost together with the other costs associated with the property without receiving any income from the property was having an adverse effect on the Applicants' finances. Nevertheless, had the Respondent's wife been in a position to make a payment to clear the rent arrears in the immediate future the Tribunal would have been inclined to continue the application to allow that to happen. However, the Respondent's representative was unable to give any real indication as to when her late mother's property might be sold and she might receive her share of the funds. The Tribunal considered that Ms McCreddie's submission that it could take six months was not unrealistic and the Tribunal did not consider that it would be reasonable to allow the rent arrears to continue to increase and there was no proposal from the Respondent's representative to pay any rent going forward.
29. The Tribunal did not consider it could reach a decision on Ground 13 without further information but was satisfied it had sufficient information before it to determine the application on Grounds 8A, 11 and 12.
30. After carefully considering the circumstances of both parties the Tribunal was persuaded that the needs of the Applicants in this application were such that although there would undoubtedly be an adverse impact on the Respondent and her family it was reasonable to grant an order for possession.

Decision

31. The Tribunal being satisfied it had sufficient information before it to make a decision without the need for a hearing, finds the Applicant entitled to an order for possession and the removal of the Respondent from 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.

G. Harding

Legal Member/Chair

13 March 2024
Date