



**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/23/4090**

**Re: Property at Ark A The Cross, Little Causeway, Culross, Fife, KY12 8HS  
("the Property")**

**Parties:**

**The National Trust for Scotland for Places of Historic Interest or Natural  
Beauty, The National Trust for Scotland, for Places of Historic Interest or  
Natural Beauty, Hermiston Way, 5 Cutlins Way, Edinburgh, EH11 4DF ("the  
Applicant")**

**Mr Terry Webster, Ark A The Cross, Little Causeway, Culross, Fife, KY12 8HS  
("the Respondent")**

**Tribunal Members:**

**Neil Kinnear (Legal Member) and Ahsan Khan (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 15<sup>th</sup> November 2023 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 Applicant provided with its application copies of the short assured tenancy agreement, notice to quit, 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 ground 8A 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 31<sup>st</sup> January 2024, and the Tribunal was provided with the execution of service.

In advance of the Case Management Discussion, the Applicant provided an up-dated rent arrears statement.

### **Case Management Discussion**

A Case Management Discussion was held at 14:00 on 15<sup>th</sup> March 2024 by Tele-Conference. The Applicant did not participate and was represented by Mr Miller, solicitor. The Respondent did not participate, nor was he represented. The Respondent had 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 Miller invited the Tribunal with reference to the application and papers to grant the order sought on ground 8A of Schedule 5 to the *Housing (Scotland) Act 1988*. The form AT6 narrated rent arrears of £8,687.87 at the time of the notice.

That figure had increased to £12,187.87 as of the date hereof. The monthly rental due in terms of clause 2.1(a) of the tenancy agreement is £500.00 per month. The Respondent has been in arrears of rent constantly since 1<sup>st</sup> December 2018.

Mr Miller confirmed that the Applicant understood that the Respondent lived at the Property alone. He has not responded to the Applicant or been in contact with it for a substantial period of time.

### **Statement of Reasons**

In terms of Section 18(4) of the *Housing (Scotland) Act 1988* as amended by the *Coronavirus (Scotland) Act 2020* and the *Coronavirus (Recovery and Reform) (Scotland) Act 2022* ("the Act"), if the Tribunal is satisfied that any of the grounds in Part I of Schedule 5 to the Act is established, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

Ground 8A in Part I of Schedule 5 to the Act is applicable if the tenant has accrued rent arrears under the tenancy in respect of one or more periods, and the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice is served under section 19 on this ground or, if dispensed with, when proceedings are raised for an order of possession on this ground.

Section 18(4ZB) of the Act provides that in deciding under subsection (4) whether it is reasonable to make an order for possession on Ground 8A in schedule 5, the First-tier Tribunal is to consider (a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, (b) the extent to which the landlord has complied with the pre-action protocol specified by the Scottish Ministers.

The Tribunal was satisfied that ground 8A contained in Part 1 of Schedule 5 to the Act had been established. The Respondent had accrued rent arrears in respect of one or more periods, and the cumulative amount of those arrears exceeded an amount equivalent of 6 months' rent when the form AT6 was served.

The Tribunal was satisfied that it was reasonable to grant the order sought. The Tribunal was not satisfied that rent is in arrears as a consequence of a delay or failure in the payment of a relevant benefit. There was no evidence to establish any such reason for rent arrears.

The Tribunal was satisfied that the Applicant had complied with the pre-action requirements under the *Rent Arrears Pre-action Requirements (Coronavirus) (Scotland) Regulations 2020*.

In the case of *City of Glasgow District Council v Erhaiganoma* 1993 SCLR 592, The Inner House of the Court of Session stated at page 594 that "Where prima facie reasonableness has been made out, we think that it is then for the tenant to put circumstances before the court to show otherwise."

In this application, the Respondent had not responded to this application advancing any arguments that it was not reasonable to issue an order for possession and had not participated in the Case Management Discussion. The Respondent had put forward no circumstances to show that it would not be reasonable for the Tribunal to issue an order for possession.

Having considered the whole circumstances, the Tribunal was satisfied that it was reasonable to make an order for possession. The arrears of rent are substantial and the Respondent did not oppose the granting of the order sought.

## **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.

**N Kinnear**

15<sup>th</sup> March 2024

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**Legal Member/Chair**

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**Date**