

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**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/18/2435**

**Re: Property at 1 Stewart Gardens, Currie, Edinburgh, EH14 5RZ (“the  
Property”)**

**Parties:**

**Dr Katherine Richardson, 14 Meadowbank Road, Kirknewton, Midlothian, EH27  
8BS (“the Applicant”)**

**Ms Claire Robertson, 1 Stewart Gardens, Currie, Edinburgh, EH14 5RZ (“the  
Respondent”)**

**Tribunal Members:**

**Sarah O'Neill (Legal Member) and Helen Barclay (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that an order for recovery of possession should be  
granted in favour of the applicant.**

**Background**

An application was received on 20 September 2018 under rule 65 of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”) seeking recovery of possession of the property under Grounds 8, 11 and 12 as set out in schedule 5 of the 1988 Act.

The application included: the tenancy agreement; and a copy of the notice required under section 19 of the 1988 Act (‘the AT6’). It also included a rent statement, showing the rent due as at 31 August 2018 to be £2,390.

Notice of the hearing, together with the application papers and guidance notes, had been served on the respondent by sheriff officers on behalf of the tribunal on 25 October 2018. She was invited to make written representations by 12 November 2018.

## **The Hearing**

A hearing was held on 15 November 2018 at George House, 126 George Street, Edinburgh EH2 4HH. The applicant was represented by Ms Kirsty Morrison, paralegal at TC Young Solicitors, who gave evidence on her behalf. The respondent was not present or represented at the hearing.

## **Preliminary issues**

The tribunal had become aware immediately before the hearing that written representations had been received from the respondent by email on 9 November, which due to an administrative error had not been received by the tribunal in advance of the hearing.

In her email, the respondent stated that she was not refusing to leave the property, and fully intended to find another home. She stated that she was suffering from health issues which made it difficult for her to leave home, and would not be attending the hearing due to ill health. She said that she understood that the hearing would most likely proceed as she had not notified the tribunal office within 5 days of receiving the notification of hearing letter dated 24 October, and apologised for the inconvenience this might cause. She said that she was willing to conduct the hearing by teleconference if this could be accommodated. She then stated: 'I would like to add that I do not dispute Ms Richardson's application to the Tribunal- all information provided is accurate.'

The tribunal asked Ms Morrison whether she had received this email prior to the hearing. She confirmed that she had, and that she had been instructed by the respondent to continue to seek an order for possession.

The tribunal noted that it was not possible to proceed with a hearing by teleconference at this late stage, and considered whether to proceed with the hearing in the circumstances. In doing so, the tribunal was mindful of its overriding objective, in terms of rule 2 of the 2017 rules, to deal with the proceedings justly, including the need to ensure, so far as practicable, that the parties are on an equal footing procedurally, and avoiding delay, so far as compatible with the proper consideration of the issues.

It noted that the respondent was not disputing that the rent arrears were owed, and had made no mention of any delay or failure in the payment of housing benefit or universal credit. Were the requirements of ground 8 to be established, therefore, the tribunal would have no discretion but to grant an order.

The tribunal considered whether in the circumstances was satisfied that the requirements of rule 24 (1) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a hearing had been duly complied with. The tribunal considered that these requirements had been complied with, and noted that the respondent's email where she said she would be willing to conduct the hearing by teleconference had been submitted after the deadline in the notification of hearing letter.

While the tribunal had considerable sympathy with the respondent given her situation, in light of all of the above considerations, it decided to proceed with the hearing in the absence of the respondent, in terms of rule 29 of the 2017 rules.

### **Evidence on behalf of the applicant**

Ms Morrison referred on behalf of the applicant to the rent statement which was already before the tribunal, and produced an updated statement, which showed the outstanding rent as at 31 October 2018 to be £3810. While the respondent had paid the sum of £4000 towards her rent on 19 June 2018, the day after service of the AT6 (Notice under section 19 of Intention to Raise Proceedings for possession), and had paid one month's rent on 6 July 2018, no payments had been made since that date,

When asked by the tribunal whether she was aware of any issues relating to housing benefit or universal credit which may be relevant to the respondent's rent arrears, Ms Morrison told the tribunal that neither she nor the respondent were aware of any such issues. She told the tribunal that the respondent had never received any payments of housing benefit direct from the local authority in respect of the respondent's tenancy.

She asked the tribunal to grant an order on the basis that the requirements of ground 8, which was a mandatory ground, had been met. In the event that the tribunal did not consider that the ground 8 requirements were met, she submitted that it would be reasonable to grant an order under grounds 11 and /or 12, given the considerable level of outstanding arrears.

### **Findings in Fact**

The tribunal made the following findings in fact:

- The applicant is the owner of the property.
- There was a tenancy in place between the applicant and the respondent. The tenancy commenced on or around 31 May 2013, running for six months until 30 November 2013.
- The monthly rent payable in terms of the tenancy agreement was £710 per month.
- The AT6 contained the prescribed information and was dated 12 June 2018. There was evidence that the form AT6 had been served on the respondent by sheriff officer on 14 June 2018. The tribunal was satisfied that the form AT6 had been validly served on the respondent.
- No notice to quit was required, as the tenancy agreement set out the relevant grounds for possession.
- As at both the date of service of the AT6 and the date of the hearing, the respondent was in rent arrears of at least 3 months.

## Reasons for Decision

Ground 8 as set out in Schedule 5 of the 1988 Act states:

'Both at the date of service of the notice under section 19 of this Act, relating to the proceedings for possession and at the date of the hearing, at least three months' rent lawfully due from the tenant is in arrears'.

In terms of section 18 and Schedule 5 of the 1988 Act, if the tribunal is satisfied that ground 8 is established, then (subject to subsection 3A), the tribunal is required to make an order for possession. Section 3A provides that where ground 8 is established, and the rent is in arrears 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 is satisfied on the evidence before it that the requirements for ground 8 are established. There were at least three months' rent due from the respondent both at the time the AT6 was served, and at the date of the hearing.

While the respondent made stated in her email of 9 November that she had recently been given a long term sickness note by her GP enabling her to apply for employment support allowance, she stated that she had been in work until 25 October 2018, and did not say that she had previously been in receipt of benefits. There was accordingly no evidence before the tribunal of any housing benefit or universal credit issues to be considered in terms of section 18 (3A) of the 1988 Act. The tribunal is therefore required to grant an order for possession under section 18 and ground 8 in Schedule 5 of the 1988 Act.

Given that the tribunal finds ground 8 to be established, it did not consider further whether grounds 11 and 12 were also established.

## Decision

The tribunal grants an order in favour of the applicant against the respondent for recovery of possession of 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.**

Sarah O'Neill

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Legal Member/Chair

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Date

15/11/18