



**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/19/2853**

**Re: Property at 89 Forth Crescent, Dundee, DD2 8EF (“the Property”)**

**Parties:**

**Mr Sam Eljamel, 11 Whinfield Place, Newport on Tay, DD8 8EF (“the Applicant”)**

**Mr Nicholas Selway, 89 Forth Crescent, Dundee, DD2 8EF (“the Respondent”)**

**Tribunal Members:**

**Fiona Watson (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that order is granted against the Respondent for possession of the Property under section 18 of the Housing (Scotland) Act 1988.**

- Background
  1. An application dated 2 September 2019 was submitted to the Tribunal under Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a repossession order against the Respondent upon termination of a short assured tenancy agreement.
- The Case Management Discussion
  2. A Case Management Discussion took place on 20 January 2020. The Applicant was represented by Billy Baxter of Pavilion Properties. There was no appearance by or on behalf of the Respondent. The application had been intimated on the Respondent by Sheriff Officer on 18 December 2019. The Tribunal was accordingly satisfied that the Respondent had been duly notified

of the date and time of the CMD and that the CMD could proceed in the Respondent's absence.

3. The Tribunal noted that whilst the application had been raised under Rule 66, the Applicant's representative had been unable to provide the Tribunal with a notice issued in terms of section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act"). From the correspondence the Applicant's representative had had with the Tribunal administration, it appeared that he actually sought to rely on a Notice to Quit and Form AT6 served under section 19 of the 1988 Act and accordingly the application would require to proceed under Rule 65 of the Rule. Mr Baxter confirmed that he wished to proceed under Rule 65 and on the basis of the rent arrears accrued by the Respondent. The Tribunal allowed the matter to proceed on that basis.
4. Mr Baxter provided the Tribunal with an updated rent statement which showed an outstanding balance of arrears of £3,135. The Respondent was now in receipt of Universal Credit which had started in November 2019, however the arrears had not been addressed and no payment proposals had been made by the Respondent to repay these. Mr Baxter had made attempts to contact the Respondent but he had not returned any methods of recent contact. He believed that the Respondent was a labourer on building sites and lived alone, but may be visited by his 16 year old son from time to time.

- Findings in Fact

5. The Tribunal made the following findings in fact:
  - (i) The parties entered into a Short Assured Tenancy Agreement ("the Agreement") which commenced 10 November 2017;
  - (ii) A Notice to Quit and Form AT6 under section 19 of the 1988 Act were served on the Respondent on 14 June 2019 by recorded delivery post;
  - (iii) The Notice to Quit required the Respondent to remove from the Property by 31 August 2019;
  - (iv) The Form AT6 under section 19 of the 1988 Act relied on grounds 8 and 11 under Schedule 5 to the 1988 Act;
  - (v) The Form AT6 under section 19 of the 1988 Act advised that proceedings would not be raised before 31 August 2019;
  - (vi) The Respondent had failed to remove from the Property and continued to reside therein.



- Reasons for Decision

6. Section 18 of the 1988 Act states as follows:

*18 (1) The First-tier Tribunal shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act.*

*(2) The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.*

*(3) If the First-tier Tribunal is satisfied that any of the grounds in Part I of Schedule 5 to this Act is established then, subject to subsections (3A) and (6) below, the Tribunal shall make an order for possession.*

*(3A) 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.*

*(4) If the First-tier 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.*

*(4A) 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.*

*(5) Part III of Schedule 5 to this Act shall have effect for supplementing Ground 9 in that Schedule and Part IV of that Schedule shall have effect in relation to notices given as mentioned in Grounds 1 to 5 of that Schedule.*

*(6) The First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless—*

*(a) the ground for possession is Ground 2 or Ground 8 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9, Ground 10, Ground 15 or Ground 17; and*

*(b) the terms of the tenancy make provision for it to be brought to an end on the ground in question.*

*(6A) Nothing in subsection (6) above affects the First-tier Tribunal's power to make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, where the ground for possession is Ground 15 in Part II of Schedule 5 to this Act.*

*(7) Subject to the preceding provisions of this section, the First-tier Tribunal may make an order for possession of a house on grounds relating to a contractual tenancy which has been terminated; and where an order is made in such circumstances, any statutory assured tenancy which has arisen on that termination shall, without any notice, end on the day on which the order takes effect.*

*(8) In subsections (3A) and (4A) above—*

*(a) "relevant housing benefit" means—*

*(i) any rent allowance or rent rebate to which the tenant was entitled in respect of the rent under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971); or*

*(ii) any payment on account of any such entitlement awarded under Regulation 91 of those Regulations;*

*(aa) "relevant universal credit" means universal credit to which the tenant was entitled which includes an amount under section 11 of the Welfare Reform Act 2012 in respect of the rent;*

*(b) references to delay or failure in the payment of relevant housing benefit or relevant universal credit do not include such delay or failure so far as referable to any act or omission of the tenant.*

7. Ground 8 of Schedule 5 to the 1988 Act states as follows:

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



8. Ground 11 of Schedule 5 to the 1988 Act states as follows:

*Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.*

9. The Tribunal was satisfied that the grounds relied upon in the Form AT6 had been met. At the date of service of the AT6 on the Respondent, there were rent arrears of £2685. The monthly rent was £450. At the date of the Case Management Discussion, the arrears stood at £3135. Accordingly, both at the date of service of the AT6 and at the date the case called before the Tribunal, there were at least three months of arrears due. Further, in terms of Ground 11 the Tribunal was satisfied that the Respondent had persistently delayed paying rent which has become lawfully due. Accordingly, the Applicant was entitled to the Order for Repossession as sought.

- Decision

10. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted 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.**

F. Watson

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Legal Member/Chair

20/1/2020  
Date