



**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/19/0013**

**Re: Property at 27 Orefield Place, East Mains, East Kilbride, G74 4BB (“the  
Property”)**

**Parties:**

**Mr Charles Gallagher, Flat 3, 98A Kingston Road, London, SW19 1LX (“the  
Applicant”)**

**Ms Linda Johnston, 27 Orefield Place, East Mains, East Kilbride, G74 4BB (“the  
Respondent”)**

**Tribunal Members:**

**Melanie Barbour (Legal Member)**

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

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

**Background**

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under rule 65 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for recovery of possession in relation to an assured tenancy under the Housing (Scotland) Act 1988 by the Applicant against the Respondent in relation to the property.
2. The application contained,
  - a copy of the tenancy agreement;
  - copy of the AT6 form with execution of service;
  - rent statement;
  - section 11 notice with email to local authority;

## Findings in Fact

11. The tribunal have found the following facts to be established:-
12. A tenancy agreement appears to have been entered into between the Applicant and Respondent for the property and existed between the parties.
13. It appears to have commenced in around 6 October 2013.
14. Clause 1.9 of the tenancy agreement provided that rent of £560.00 was due per calendar month in advance, with payments being due on 5<sup>th</sup> day of each rental period.
15. That the rental statement showed amounts due each month, amounts received, and rent outstanding.
16. That the rental statement showed a number of separate payments of £560 being paid.
17. That the rental statement showed entries from 26 October 2013 until 5 December 2018.
18. That the rental statement showed a balance in arrears of £17,308.40 as at 5 December 2018.
19. That as at 26 April 2019 the rent outstanding appeared to be £19,548.40.
20. That an AT6 Notice had been served by sheriff officer's service on the Respondent by the Applicant on 11 December 2018.

## Reasons for Decision

21. Section 18 of the Housing (Scotland) Act 2018 states:-

### **18 Orders for possession.**

*(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;

- photographs of overgrown garden; and
  - photographs of rectified garden.
3. The Applicant's representative, Ms Caldwell, from Messrs T C Young, attended on behalf of the Applicant. There was no appearance from the Respondent. It appeared that the Respondent's representative had had notice of today's hearing and I was therefore prepared to proceed with the hearing in the absence of the Respondent.

### Hearing

4. The Applicant's Representative confirmed that she was seeking an order for eviction in terms of Ground 8 of schedule 5 of the Housing (Scotland) Act 1988 Act as the Respondent was in arrears of rent, both at the date of serving the AT6 Form and at the date of the hearing, at least three months' rent lawfully due from the tenant is in arrears. Reference was made to the tenancy agreement between the parties; the AT6 form; and the rental statement.
5. The Applicant advised that the current position regarding outstanding rent arrears was that they had increased and were now £19,548.40.
6. The Applicant noted that although the tenancy agreement lodged had not been signed, evidence of the rent payments by the Respondent would support her position that a tenancy had been entered into between the parties on the terms of the agreement submitted. She also noted that to date neither the Respondent nor her representative had objected to the application or appeared to dispute the arrears or the sum sought.
7. The tenancy agreement set out the grounds for recovery in terms of schedule 5 of the Housing (Scotland) Act 1988 and therefore the Applicant did not have to serve a notice to quit.
8. She advised that the Applicant had contacted the Respondent about her rent and arrears. He had made attempts to get the Respondent to pay her rent and arrears; he had made numerous telephone calls to her and sent numerous letters to her. He had also tried to contact the Council Tax section of the Council to try and find out about the Respondent's benefit situation; however they had not been forthcoming with him due to confidentiality issues.
9. She advised that the Applicant was unaware of any outstanding housing benefit or relevant benefit issues affecting the Respondent which had led to delay or failure in the payment of her rent. She advised that there had been one payment of Housing Benefit in February 2018 and all other payments she understood had been made directly by the Respondent.
10. She therefore asked that the order for possession be granted in favour of the Applicant to recover the property.

*(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.*

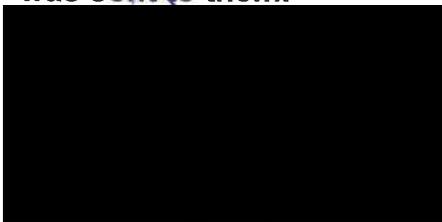
22. On the basis of all the evidence before me including the application, the additional documents and the verbal submissions, I found that an assured tenancy existed.
23. I find that there are contractual obligations as set out within the tenancy agreement, which include a duty to pay rent. The tenancy agreement also sets out the terms of Ground 8 in full as a ground of recovery of possession of the subjects.
24. The tenancy agreement provided for recovery of the property where the Respondent was in breach of the grounds set out in schedule 5 of the 1988 Act.
25. There was evidence before me of persistent non-payment of the rent in excess of a three month period both at the date of the service of the AT6 and the hearing. I heard evidence of attempts to contact the Respondent to address her arrears but this had not been met with success. I was advised that the Applicant was not aware of that rent was in arrears as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit.
26. I find Ground 8 met and I consider that it would be reasonable to grant the order in relation to Ground 8.
27. Accordingly, I am prepared to make an order for eviction Ground 8

#### Decision

28. The Tribunal grants an order in favour of the Applicant against the Respondent for 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.**



26. 4. 19

**Legal Member/Chair**

**Date**