

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

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**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/18/0986**

**Re: Property at 65 Drumgelloch Street, Airdrie, ML6 7EZ (“the Property”)**

**Parties:**

**Mr Scott Middleton, 46 Glenwell Street, Airdrie (“the Applicant”)**

**Ms Natalie Bowman, 65 Drumgelloch Street, Airdrie, ML6 7EZ (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member) and Mary Lyden (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order against the Respondent for possession of the property and eviction of the Respondent**

**Background**

1. By application dated 23 April 2018 the Applicant applied to the Tribunal for an order under Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
2. Following correspondence between the Tribunal and the Applicant’s representatives Moore MacDonald, Solicitors, Motherwell a legal member with delegated powers on 9 July 2018 referred the application to a hearing of the Tribunal.

**The Hearing**

3. A hearing took place on 28 August 2018 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant attended along with his wife Mrs Janette Middleton and he was represented by Mr James Moore, solicitor of Moore



MacDonald Solicitors, Motherwell. There was no appearance by the Respondent.

4. By way of a preliminary matter the Tribunal pointed out that although the application had been raised under Rule 66 it appeared from the documentation that had been lodged in support of the application namely Form AT6, Section 11 Notice and Schedule of outstanding rent that the application was in fact being made under Rule 65. Mr Moore confirmed that this was indeed the case and asked the Tribunal to exercise its dispensing power to allow the application to proceed under Rule 66 on the basis that there would be no prejudice to the Respondent who was fully aware that the reason for the Applicant seeking possession of the property was as a result of the rent not being paid for many months. Mr Moore also pointed out that the Respondent had not turned up for the hearing.
5. Mr Moore went on to say that ever since the tenancy had commenced the Respondent had failed to pay the full rent and had ceased paying rent altogether from August 2017. The total rent outstanding now amounted to £5868.00.
6. Mr Moore apologised for the oversight in ticking the wrong box on the application form but reiterated that as all the correct documentation had been sent to the Respondent and the arrears of rent were very substantial the application ought to be allowed to proceed.
7. Mr Middleton explained that up until August 2017 he received payment of rent through housing benefit although there had been a shortfall each month of £54.00 that ought to have been paid by the Respondent but never was. From September 2017 Housing Benefit had stopped and the Respondent had paid nothing towards her rent.
8. Mr Middleton said that around that time the Respondent had complained of damp in the property and he had arranged for damp specialists Richards and Starling to inspect the property. They had prepared a report advising that the problem was from condensation occurring through the Respondent failing to properly ventilate the property.
9. Mr Middleton said that following on from that report when he had tried to speak to the Respondent she had been verbally abusive towards him and since then there had been no contact.
10. Mr Middleton confirmed that when housing benefit had been paid it was paid direct into his bank account. Since it stopped no rent had been paid into the account. He had not brought bank statements with him but could produce them if required.
11. Mr Moore asked the Tribunal to grant the order sought on the basis that it had been shown that there was more than three months rent due both at the date



of service of the notice under Section 19 of the 1988 Act and at the date of the hearing in terms of Ground 8 of Schedule 5 of the Act.

### Findings in Fact

12. The parties entered into a Short Assured Tenancy Agreement that commenced on 28 February 2015 for a period of six months until 27 August 2015 and then continued thereafter by tacit relocation.
13. There was a monthly shortfall of rent of £54.00 between May 2016 and August 2017. From September 2017 housing Benefit ceased to be paid directly to the Applicant's bank account and the Respondent failed to make any payment of rent.
14. The Respondent was served with a Form AT6 and Notice to Quit by the applicant's solicitors by recorded delivery post on 11 June 2018.
15. There was more than three months rent outstanding both at the date of service of the Form AT6 and at the date of the hearing.
16. Although the Application was made under Rule 66 it was intended to be made under Rule 65 and all the appropriate documents for such an application were properly served on the Respondent. It was reasonable in all the circumstances to allow the application to proceed under Rule 65.

### Reasons for Decision

17. The Applicant's solicitor admitted to finding Form E confusing but accepted he had made a mistake. Given that it was clear from all the documentation and correspondence that had been sent to the Respondent and given that she had decided not to attend the Hearing the Tribunal felt that in all the circumstances the interests of justice would best be served by allowing the application to be amended to proceed under Rule 65 without the need for further intimation to the Respondent given the level of rent arrears and the documentation that had already been served upon her.
18. The Applicant provided credible information by way of oral evidence to support his position that there was more than three months rent outstanding both when the Form AT6 was served and at the date of the hearing and was therefore entitled to the order sought.

### Decision

19. The Applicant is entitled to an order against the Respondent for possession of the property and eviction of the Respondent.



## 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.

GRAHAM HARDING

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Legal Member/Chair

28 August 2018  
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Date

