



**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/19/1849

**Re: Property at 2 Arran Court, Fraserburgh, Aberdeenshire, AB43 9PG (“the
Property”)**

Parties:

**Mrs Diane Stephen, 4 Robbie's Walk, Fraserburgh, Aberdeenshire, AB43 7BJ
 (“the Applicant”)**

**Ms Beverley Jamieson, 2 Arran Court, Fraserburgh, Aberdeenshire, AB43 9PG
 (“the Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined to make an order for repossession against the
Respondent**

- 1 By application dated 14th June 2019 the Applicant applied to the Tribunal for an order for repossession against the Respondent under section 18 of the Housing (Scotland) Act 1988 (“the 1988 Act”). In support of the application the Applicant provided a Tenancy Agreement between the parties dated 14th April 2017, a Form AT6 dated 17th May 2019 and recorded delivery receipt, a rent statement and a notice under section 11 of the Homelessness etc (Scotland) Act 2003 which had been served upon Aberdeenshire Council. The Applicant also provided a form AT5, section 33 notice and Notice to Quit however it was noted that she sought to proceed under section 18 of the 1988 Act on the basis of the AT6, citing ground 12 under Schedule 5 of the 1988 Act.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on

which to reject the application. A Case Management Discussion was therefore assigned for 20th August 2019.

- 3 On 9th July 2019 the Respondent was served with a copy of the application together with notification of the date, time and location of the Case Management Discussion by Sheriff Officers.

Case Management Discussion

- 4 The Case Management Discussion took place at Banff Sheriff Court on 20th August 2019. The Applicant was present. The Respondent did not attend. The Tribunal was satisfied that the Respondent had received proper notification of the Case Management Discussion and therefore determined to proceed in her absence.
- 5 The Applicant advised that the rent arrears were £16,317.42 as at the 28th July 2019. The rent for August would shortly be due. The Applicant had tried to help the Respondent with filling out benefit forms but she hadn't followed through with the paperwork. The Applicant had then referred her to Forbes Property, tenancy managers, for assistance to no avail. The last payment received was on 4 March 2019. The Respondent has been the Applicant's tenant for ten years but had recently had a chaotic lifestyle which had led to a decline in the conduct of her tenancy. The Applicant understands she is residing there alone. Her grown children are all away as far as she is aware. The Applicant feels on that basis she has done all she can to assist the Respondent and there is no more she can do.

Reasons for Decision

- 6 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Tribunal noted that the application paperwork had been served upon the Respondent by Sheriff Officers. She had not taken the opportunity to make written representations, nor had she attended the Case Management Discussion.
- 7 The Tribunal noted that the Applicant sought recovery of possession under ground 12 of Schedule 5 of the 1988 Act. Ground 12 permits a landlord to seek repossession where some rent lawfully due from the tenant is unpaid on the date on which the proceedings for possession are begun and the tenant was arrears at the date of the service of the Form AT6.

- 8 The Applicant had provided a Notice to Quit with the application paperwork however on the basis that the ground relied upon was contained in the Tenancy Agreement the Tribunal accepted that the Applicant was entitled to raise proceedings without terminating the contractual tenancy between the parties in terms of section 18(6) of the 1988 Act. As comment, the Tribunal would have had to consider whether the Notice to Quit was in fact valid in the event of having to make a determination on it, as it did not appear to terminate the tenancy at a valid ish date.
- 9 The Tribunal therefore considered the provisions of ground 12 as cited in the Form AT6. Ground 12 is a discretionary ground. In terms of Section 18(4) of the 1988 Act, the Tribunal can only make an order for repossession on this ground where it considers it reasonable to do so.
- 10 Having heard the submissions from the Applicant at the Case Management Discussion, the Tribunal accepted that arrears in the sum of £14,978.94 were outstanding on the date the application was submitted to the Tribunal. Furthermore, the Tribunal accepted that arrears in the sum of £13,640.46 were outstanding at the date the Form AT6 was served. The Tribunal therefore accepted that the provisions of ground 12 were met and it therefore had to consider whether an order for repossession was reasonable.
- 11 In the absence of any evidence to the contrary, the Tribunal accepted the Applicant's submissions at the Case Management Discussion. The Tribunal found her position to be credible in this regard. Having regard to the level of arrears, the lack of payments, the Respondent's personal circumstances and the attempts the Applicant has made to assist her all to no avail, the Tribunal determined that it was reasonable for an order for repossession to be granted.
- 12 The Tribunal therefore determined to make an order for repossession 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.

Ruth O'Hare

Legal Member/Chair

20/8/19

Date