



**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/18/2197

Re: Property at Braiklay Croft, Tarves, Ellon, AB41 7NJ

Parties:

**The Earl of Haddo, The Estate Office, Mains of Haddo, Tarves, Ellon, AB41 7LD
("the Applicant")**

**Masson Glennie LLP, Solicitors, Broad House, Broad Street, Peterhead, AB42
1HY ("the Applicant's Agent")**

Mr Ian Michael Chick, Braiklay Croft, Ellon, AB41 7NJ ("the Respondent")

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

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

Background

- 1 The Applicant submitted an application dated 20 August 2018 to the Tribunal under Rule 65 of the First-tier Tribunal (Housing and Property Chamber) Procedure Regulations 2017 for an order for repossession of the Property against the Respondent. In support of the application, the Applicant submitted the following documentation:-
 - a. Copy Lease between the Applicant and Respondent dated 20th April 2012 and 23rd April 2012 and AT5.
 - b. Recorded Delivery receipt dated 2 August 2018 and proof of signature dated 3 August 2018.

- c. Copy Notice of Termination of Lease dated 2nd August 2018 with AT6 attached;
 - d. Notice to Aberdeenshire Council under section 11 of the Homelessness etc (Scotland) Act 2003;
 - e. Copy Letter from MHT Andrew on behalf of the Applicant to the Respondent dated 14th February 2017 regarding payment of rent;
 - f. Copy Excerpt from Rent Accounts showing arrears of £7527.82 as at 1 June 2018
- 2 By Notice of Acceptance of Application dated 10th October 2018, the Convener with delegated powers of the Chamber President intimated that there were no grounds to reject the application. The Case Management Discussion was thereafter assigned for 26th November 2018.
- 3 A copy of the application together with supporting documentation and notification of the Case Management Discussion was served on the Respondent by Sheriff Officers on 6 November 2018.

Case Management Discussion

- 4 A Case Management Discussion took place on the 26th November 2018. Mr Gibb on behalf of the Applicant's Agent was present. Neither the Applicant nor the Respondent were present.
- 5 The Tribunal clarified with Mr Gibb that the AT6 had been served on the Respondent as an appendix to the letter of 2nd August 2018. The Respondent had signed for the recorded delivery mail as evidenced by the proof of delivery receipt submitted with the application.
- 6 Mr Gibb explained that separate proceedings had been raised and an order had been obtained against the Respondent for payment of rent arrears in the sum of £7,000. He had not sought to dispute the sum due. The arrears had now increased to approximately £11,000. There had been no contact from the Respondent in respect of the current proceedings before the Tribunal. Mr Gibb submitted that the provisions of ground 8 had been met and the Tribunal was therefore obliged to grant the order for repossession.

Findings in Fact

- 7 The parties entered into a Tenancy Agreement in respect of the Property dated 20th April and 23rd April 2012.
- 8 The tenancy is an assured tenancy as defined by section 12 of the Housing (Scotland) Act 1988.
- 9 In terms of the said tenancy agreement the Respondent undertook to make payment of rent in the sum of £700 per month.

- 10 The said tenancy agreement makes provision for the tenancy to be terminated on grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988.
- 11 On 2 August 2018 the Applicant's Representative served a Form AT6 (Notice of Intention to Raise Proceedings for Recovery of Possession) upon the Respondent in terms of section 19 of the Housing (Scotland) Act 1988. In terms of the said AT6, repossession would sought on grounds 8, 11 and 12 of Schedule 5 of the said Act.
- 12 The Applicant is in arrears of more than three months rent.
- 13 The Applicant's failure to make payment of rent is not a result of any failure or delay in the payment of housing benefit.

Reasons for Decision

- 14 Having considered the verbal and written representations from both parties the Tribunal was satisfied that it was able to make sufficient findings to determine the case without a hearing and that to do so would not be prejudicial to the interests of the parties. The Tribunal was satisfied that the Respondent had received reasonable notice of the application by virtue of the certificate of intimation from Sheriff Officers.
- 15 The Tribunal accepted that the Respondent had been served with a Form AT6 by virtue of the proof of signature submitted by the Applicant dated 3rd August 2018. The Tribunal further accepted that the Tenancy Agreement made provision for the tenancy to be terminated on the grounds stated in the Form AT6, namely ground 8, 11 and 12 of Schedule 5 of the 1988 Act thereby satisfying the provisions of section 18(6) of the said Act.
- 16 Ground 8 is a mandatory ground. It provides that where a tenant is in arrears of more than three months rent the Tribunal must grant an order for repossession. The only exception is where the arrears are due to a failure or delay in the payment of housing benefit. The Tribunal had nothing before it to suggest that housing benefit was due to be paid in this case. The Respondent had not taken the opportunity to enter the process and had not made any representations in this regard. Furthermore, he had not sought to dispute separate proceedings raised by the Applicant in respect of the sums due. The Tribunal therefore accepted the submissions of the Applicant's Agent regarding the outstanding arrears.
- 17 Accordingly on the basis of its findings in fact the Tribunal concluded that ground 8 had been met and therefore it was obliged to make an order for repossession. For the avoidance of doubt the Tribunal was in turn satisfied that the provisions of grounds 11 and 12 were met in that rent lawfully due by the Respondent was unpaid both at the time the AT6 was served and when the proceedings before the Tribunal were raised, and the Respondent had persistently failed to make payment of rent lawfully due.

Decision

- 18 The Tribunal determined to make an order for repossession of the Property against 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.

R O'Hare

Legal Member/Chair

26/11/18

Date