



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 18(1) of the Housing
(Scotland) Act 1988**

Chamber Ref: FTS/HPC/EV/19/3604

**Re: Property at Briar Glen, Main Street, Denholm, Hawick, TD9 8NU ("the
Property")**

Parties:

**Mrs Catherine Nassey Baxter Laing, Honeyburn, Denholm, Hawick, TD9 8LR
("the Applicant")**

**Mr John McMahon Smith, Ms Heather Stodart, Unknown, Unknown ("the
Respondents")**

Tribunal Members:

Graham Harding (Legal 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 for the
possession of the property and the ejection of the Respondent from the
property.**

Background

1. By application dated 6 November 2019 the Applicant's representatives Andrew Haddon and Crowe W.S., Solicitors, Hawick applied to the Tribunal for an order for possession of the property under Ground 8 of Schedule 5 of the Housing (Scotland) Act 1988. The Applicant's representatives submitted a copy of the Tenancy Agreement, Form AT6, Certificate of Service, a Rent Statement and Section 11 Notice in support of the application.
2. By Notice of Acceptance dated 25 November 2019 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.

3. Intimation of the Case Management Discussion on the Respondent was unsuccessful as it appeared the Respondent had vacated the property in the summer of 2019. As a result, a further Case Management Discussion was assigned and intimation to the Respondents was by way of advertisement on the Housing and Property Chamber website. Intimation was given to the Applicant's representatives by post.

The Case Management Discussion

4. A Case Management Discussion was held at Hawick on 11 February 2020. Due to adverse weather conditions the legal member of the Tribunal conducted the discussion by tele-conference. The Applicant did not attend but was represented by Mr Charles Rickett of the Applicant's representatives. The Respondents did not attend and were not represented. The Tribunal was satisfied that intimation of the Case Management discussion had been given to the Respondent by virtue of the Certificate of Advertisement dated 11 February 2020 and determined to proceed in the absence of the Respondents.
5. Mr Rickett confirmed that the parties had entered into a Short Assured Tenancy that commenced on 1 January 2016 that endured for six months and then continued from month to month thereafter until terminated by either party giving two months' notice.
6. Mr Rickett said that the Respondents had not paid any rent since the beginning of June 2019 and as a result Sheriff Officers had served Form AT6 on the Respondents on 18 October 2019. The earliest date for raising proceedings had been given as 5 November 2019 and the application had been submitted on 6 November 2019.
7. Mr Rickett confirmed a Section 11 Notice had been sent to Scottish Borders Council on 6 November 2019.
8. Mr Rickett said that he and the Applicant had been unaware of exactly where the Respondents were. They had left belongings in the property hence the need for the application.
9. Mr Rickett said that although it appeared that the Respondents had vacated the property some time ago the Applicant still wished the order to be granted as they had not given notice and had left belongings in the property. There had been more than three months rent outstanding at the date of service of the AT6 and at the date of the Case Management Discussion and therefore the terms of Ground 8 of Schedule 5 were satisfied and the order should be granted.

Findings in Fact

10. The parties entered into a Short Assured Tenancy agreement on 1 January 2016 that endured for a period of six months and continued thereafter from month to month until terminated by either party giving two months written notice.
11. The rent was £300.00 per calendar month.
12. The Respondents have not paid rent since 1 June 2019.
13. Sheriff Officers served a Form AT6 on the Respondents on 18 October 2019.
14. More than three months rent was outstanding at the date of service of Form AT6
15. The Applicant's representative sent a Section 11 Notice to the Scottish Borders Council on 6 November 2019.
16. The Respondents have not lived in the property for some time but have left their belongings in the property.
17. More than three months rent was outstanding as at the date of the Case Management Discussion.

Reasons for Decision

18. The Tribunal was satisfied from the documents provided and the oral submissions of the Applicant's representative that the parties entered into a Short Assured Tenancy agreement at a monthly rent of £300.00. Although the Respondents may have moved out of the property in the summer of 2019, they did not provide the Applicant with any written notice and they have left their belongings in the property and the tenancy is therefore continuing.
19. The Applicant's representatives arranged for a Form AT6 to be served on the Respondents by Sheriff Officers once three months arrears of rent had accrued.
20. The proceedings were intimated to Scottish Borders Council by the Applicant's representatives in accordance with the provisions of the Homelessness etc (Scotland) Act 2003.
21. The Tribunal was satisfied that intimation of the proceedings had been properly given by way of advertisement on the Housing and Property Chamber website for the requisite period in terms of Rule 6A of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017.
22. As no rent had been paid by the Respondents from 1 June 2019 the Tribunal was satisfied that more than three months rent was outstanding both at the date of service of the AT6 and at the date of the Case Management Discussion and therefore the terms of Ground 8 of Schedule 5 of the Housing (Scotland) Act

1988 were satisfied and as this was a mandatory ground for possession the order sought must be granted.

Decision

23. The Tribunal having considered the documents submitted with the application and the oral submissions of the Applicant's representative at the Case Management Discussion found the Applicant entitled to an order for the possession of the property and the ejection of the Respondents from 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.



Legal Member/Chair

11 February 2020

Date