



**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/18/2731**

**Re: Property at 2 Wall Street, Camelon, Falkirk, FK1 4QB (“the Property”)**

**Parties:**

**Mr Raymond Murray, 52 Stark Avenue, Camelon, Falkirk, FK1 4PR (“the Applicant”)**

**Ms Wendy Bartsch, 2 Wall Street, Camelon, Falkirk, FK1 4QB (“the Respondent”)**

**Tribunal Members:**

**Virgil Crawford (Legal Member)**

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

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

**BACKGROUND**

1. By lease dated 3 October 2017 the Applicant rented the Property to The Respondent;
2. The Property is owned jointly between the Applicant and his wife, Anne Murray. Anne Murray, however, was not party to the lease;
3. The rent payable was £500.00 per calendar month;
4. The Respondent fell in to arrears of rent;
5. The Applicant presented an application to the Tribunal seeking an order for eviction of the Respondent on the basis of the rent arrears;
6. As at the date of the application to the Tribunal, (15 October 2018) the arrears of rent amounted to £3,000.00. As at the date of the Case Management Discussion (15 March 2019) the arrears were no less than £4,250.00;

**THE HEARING/CASE MANAGEMENT DISCUSSION**

7. The Applicant attended the Case Management Discussion. His wife, Anne Murray, attended also;
8. Anne Murray confirmed, for the avoidance of any doubt, that she was aware of the granting of the lease and also was aware of and consented to the application to the Tribunal;

9. The Respondent did not attend the Case Management Discussion. The Tribunal, being satisfied in terms of Rule 24 of The First Tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 (the "FTT Rules") that the Respondent had been given reasonable notice of the date, time and place of the Case Management Discussion, determined, in terms of Rule 29 of the FTT Rules, that it was appropriate to proceed in the absence of the Respondent;
10. The Applicant had previously forwarded an updated rent statement to the Tribunal. This confirmed that rent arrears had been accruing since April 2018. No rent was paid that month. Since then the only rental payments made were £500.00 in October 2018, £500.00 in November 2018 and £750.00 in January 2019;
11. Arrears of rent were no less than £4,250.00 as at the date of the Case Management Discussion;
12. The Tribunal enquired as to whether the Respondent was in receipt of Housing benefit. The Applicant advised that he had seen correspondence during August 2018 that the Respondent was not receiving Housing benefit although that was due to the fact she had not provided necessary information to support her application. The Applicant was unaware as to whether she was receiving benefits as at the date of the Case Management Discussion but if she was nothing was being paid towards the rent nor the arrears;

## **FINDINGS IN FACT**

13. The Tribunal made the following findings in fact:-
  - a) By lease dated 3 October 2017 the Applicant rented the Property to The Respondent;
  - b) The Property is owned jointly between the Applicant and his wife, Anne Murray. Anne Murray was not party to the lease but was aware of it and consented to the application to the Tribunal;
  - c) The rent payable was £500.00 per calendar month;
  - d) The Respondent fell in to arrears of rent, the arrears starting from April 2018 and increasing thereafter;
  - e) As at the date of the application to the Tribunal, (15 October 2018) the arrears of rent amounted to £3,000.00. As at the date of the Case Management Discussion (15 March 2019) the arrears were no less than £4,250.00;
  - f) A notice in terms of s19 of the Housing (Scotland) Act 1988 (the "1988 Act") – commonly referred to as a form AT6 - had been timeously served on the Respondent, said notice being served on 9 October 2018;
  - g) The notice intimated that proceedings may be raised on the basis of Grounds 8 and 11 of Schedule 5 to the 1988 Act;
  - h) That as at the date of the application to the Tribunal and as at the date of the case Management Discussion, the Respondent was in arrears of rent of at least 3 months (Ground 8 of Schedule 5 to the 1988 Act);
  - i) That since April 2018 the Respondent had persistently delayed paying rent which was lawfully due (Ground 11 of Schedule 5 to the 1988 Act);

## REASONS FOR DECISION

14. The Respondent was in arrears of rent. As at the date of service of the Notice in terms of section 19 of the 1988 Act, and as at the date of the Case Management Discussion, the rent was more than 3 months in arrears;
15. There was no information before the Tribunal to enable it to conclude that the arrears, and certainly the full extent of the arrears, were as a result of any delay or failure in the payment of any relevant benefit;
16. In any event, given that arrears had been accruing for a period approaching one full year, that rent was still not being paid, that the only information available to the Tribunal was that the Respondent had failed to provide information necessary to support an application for benefit and that that failure was more than 6 months prior to the Case Management Discussion, it would not have been reasonable to have delayed nor refused the order sought;
17. That as at the date of the application to the Tribunal and as at the date of the case Management Discussion, the Respondent was in arrears of rent of at least 3 months. In terms of Ground 8 of Schedule 5 to the 1988 Act this is a mandatory ground on which the Tribunal must grant an order;
18. That since April 2018 the Respondent had persistently delayed paying rent which was lawfully due. In terms of Ground 11 of Schedule 5 to the 1988 Act this is a discretionary ground on which the Tribunal may grant the order sought. Having regard to the long standing, persistent failures to pay rent, together with the amount outstanding, it was reasonable that an order be granted on this ground also.

## DECISION

The Tribunal grants order to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property at 2 Wall Street, Camelon, Falkirk, FK1 4QB and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

The Order is not to be executed prior to 12 noon on Tuesday 23 April 2019

### 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.

**V Crawford**

15 March 2019

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Legal Member/Chair

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Date