

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 19 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/18/3406

Re: Property at 2E North Church Street, Callander, FK17 8EF (“the Property”)

Parties:

Mr Ronald Kerr, Mrs Irene Kerr, Byre Cottage, Easter Gartchonzie, Invertrossachs Road, Callander (“the Applicant”)

Ms Kerry Hutchison, 2E North Church Street, Callander, FK17 8EF (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Tony Cain (Ordinary Member)

Decision (in absence of the Respondent)

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

This matter called for a Hearing at 10 am on 1 February 2019 at STEP, Stirling Enterprise Park, John Player Building, Stirling, FK7 7RP. The Applicants were personally present together with their representative, Mr Matheson, Solicitor. The Respondent was not present or represented. On 31 January 2019 she had made a postponement request to the Tribunal by email.

At the start of the Hearing the Tribunal considered the postponement request as a preliminary matter. The Postponement request took the form of an email that was sent to the Tribunal on 31 January 2019 at 08.21. This email stated:

“I have a letter from the hospital for an appointment, I have attached proof of this and I’m writing to ask if there is any possible chance the meeting could please be rescheduled?”

A copy of a letter was attached to this that appeared to be a letter from Forth Valley Royal Hospital stating that the Respondent had an appointment on Friday, 1 February 2019 at 09:20. This coincided with this Hearing.

The Postponement request was opposed by Mr Matheson on the basis that it came too late in the day and it was unclear when this appointment had been arranged. The Tribunal adjourned to deliberate on whether or not the Hearing should be postponed.

The Tribunal considered several factors had to be considered in deciding whether to refuse or grant a postponement. There was no doubt that the letter from the hospital appeared genuine but it was unclear when this appointment had been arranged and whether it could, for example, be easily rearranged.

The importance or significance of the appointment was also unknown. The Tribunal also noted that the Application had been served by Sheriff Officers on the Respondent on 16 January 2019. The Tribunal observed that this provided the Respondent with the obligatory 14 day period of notice but little more. The Tribunal also observed that receiving just over two weeks notice of a Hearing date could reasonably be considered a basis to postpone a Hearing in some circumstances if there was a clear prior commitment that the Tribunal considered justified a postponement.

The Tribunal however did note that the papers served on the Respondent did confirm that any request to postpone the Hearing must be made within 5 days of her having received the Application under explanation that otherwise the Tribunal would only be postponed in exceptional circumstances. The Tribunal also considered that the email from the Respondent gave no hint as to what her position might be and, importantly, any defence that she might have.

In weighing all these factors the Tribunal considered that it would not be fair and efficient to allow the postponement request and therefore decided to proceed with the Hearing in the absence of the Respondent.

Mr Matheson invited the Tribunal to make an Eviction Order on the basis that Grounds 8 of Schedule 5 to the Housing (Scotland) Act 1988 was established. A rent statement was lodged with the Application that narrated that the sum of £5,250.00 was lawfully due when the Form AT6 and Notice to Quit were served on the Respondent on 30 May 2018.

The tenancy agreement was not produced with the Application. The Tribunal was told that the Respondent had refused to sign the tenancy agreement and did not return it to the Applicants. An up-to-date rent statement was then lodged at the Hearing which narrated that, as at today's date, the sum due in outstanding rent arrears was £8,350.00.

The Tribunal also observed that notice of the Application had also been given to the local authority in terms of the Homelessness Etc (Scotland) Act 2003.

The Tribunal considered that given the absence of the tenancy agreement it would wish to hear evidence in respect of matters relating to the alleged rent arrears. The Tribunal heard evidence from both Applicants who were taken through the rent statements by Mr Matheson. The Tribunal considered both Applicants to be entirely credible and reliable in their evidence.

The Tribunal then adjourned to consider matters. The Tribunal considered that the Grounds upon which the Application was based had been established. The Tribunal considered that, in respect of Grounds 8 of Schedule 5 of the Housing (Scotland) Act, three months rent was lawfully due both at the date of service of the AT6 and at today's Hearing. The Tribunal considered that all other procedural and statutory requirements had been met.

The Tribunal therefore granted the Application and made an Eviction order.

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.

A McLaughlin

Legal Member/Chair

1/2/19

Date