



**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/20/1853**

**Re: Property at 137 Dunholm Road, Dundee, DD2 4SE (“the Property”)**

**Parties:**

**Mr Graham Finlayson, 56 William Street, Tayport, DD6 9HQ (“the Applicant”)**

**Miss Amber Louise Milne, Unknown, Unknown (“the Respondent”)**

**Tribunal Members:**

**Lesley Ward (Legal Member)**

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

- 1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for the eviction of the respondent from the property be made on grounds 11 and 12 of schedule 5 of the Housing (Scotland) Act 1988, and on the basis that the rent arrears are not as a consequence of a delay or failure in payment of a relevant benefit and it is reasonable to grant the order.**
2. This was a case management discussion ‘CMD in connection with an application in terms of rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, ‘the rules’. The applicant attended. The respondent did not attend and was not represented. The tribunal had sight of the certificate of service by advertisement dated 8 April 2021 and proceeded with the CMD in terms of rules 24 and 29.
3. The case has a procedural history. A first CMD on 29 October 2020 was adjourned with the following directions:

The Applicant is required to provide:

- (1) A copy of the completed s11 notice on the local authority.
- (2) An updated rent statement.
- (3) Any documentation which was attached to the AT6 served on the respondent.

The said documentation should be lodged with the Chamber no later than close of business on 12 November 2020.

4. The further documents were lodged. At the CMD on 18 December 2020 neither party attended. The tribunal noted that the applicant sent an email to the tribunal on 15 December 2020 stating that he was informed by a neighbour on 3 December 2020 that the respondent had left the property. It appeared to the tribunal that the applicant may no longer require an eviction order. The tribunal was satisfied that the applicant's representative was aware of the CMD taking place. In the absence of any appearance the tribunal dismissed the application.
5. The applicant wrote to the tribunal chamber by email on 29 December 2020 stating that due to a misunderstanding between him and his representative, he was not represented at the adjourned CMD. He also stated that the respondent had left the property and he sought clarification from the tribunal as to whether he still needed to proceed with the eviction. The applicant thereafter wrote to the tribunal by email on 2 January 2021 seeking a recall. The application states:

*I am writing to confirm that I wish to continue with the eviction application of Amber Milne from the property at 137 Dunholm Road Dundee DD24SE. My intention is to legally reclaim my property.*

6. The applicant applied for recall was granted on 15 January 2021. The tribunal also directed that service of the decision and CMD notice be on the respondent by advertisement in terms of rule 6A of the rules.
7. The tribunal had before it the following copy documents:
  - (1) Application dated 2 September 2020.
  - (2) Tenancy agreement.
  - (3) Notice to quit.
  - (4) AT6.
  - (5) Rent statement.
  - (6) Sheriff officer's execution of service of 3 and 4.
  - (7) Updated rent statement.
  - (8) Exchange of text messages between applicant and respondent.
  - (9) S11 notice.
  - (10) Land certificate.
  - (11) Rent statement dated 10 November 2020.
  - (12) Further s11 notice.

- (13) Paper apart attached to ST6.
- (14) Email from applicant to tribunal dated 15 December 2020.
- (15) Email from applicant to tribunal dated 7 January 2021.

## **Discussion**

8. The tribunal noted at the first CMD on 29 October 2020 that the AT6 lodged is incomplete as the grounds for eviction are not narrated in full. Further, part 3 of the AT6 is blank. The applicant has since lodged a copy of a 'paper apart' which was attached to the AT6. The tribunal is not satisfied that the AT6 contains all the relevant information. The tribunal indicated that it was possible to proceed on ground 11 and 12 as s19 of the Housing (Scotland) Act 1988 allows the tribunal to dispense with the requirement of notice if it is reasonable to do so. The applicant invited the tribunal to proceed to consider the eviction on the remaining grounds 11 and 12 and to dispense with the notice. This was on the basis that there were substantial arrears and it was reasonable to grant the eviction and the arrears were not due to any delay or failure in a relevant benefit.
9. The applicant stated that substantial arrears have accrued. The arrears in November 2020 were £8830. The respondent moved out of the property around December 2020. She did not give any notice to the applicant that she was moving out and she did not return the keys. He was unable to gain access through the front door as she had changed the locks, but he was able to gain access at the rear to secure the property and shut the windows. The applicant stated that the respondent worked for the letting agents that he previously instructed to deal with the eviction application. The applicant stated that the respondent has always worked and has not been eligible for housing benefit as far as he is aware. The applicant is concerned that the respondent may try and return to the property. The applicant wants to have the security of an eviction order. He has given up his landlord's registration and a family member will move into the property once he obtains the eviction order. The property is lying empty at present.

## **10. Findings in fact.**

- The applicant is the owner of the property.
- The parties entered into a tenancy agreement in 2015 for let of the property for the initial period of 3 years from 28 February 2015 until 27 February 2018 and month to month thereafter.
- The applicant served a valid notice to quit on 20 February 2020 with an ish date of 27 April 2020.
- The tenancy has come to an end and tacit relocation is not occurring.

- The applicant served an incomplete AT6 dated 20 February 2020 by sheriff officer on that date.
- Rent arrears began to accrue in May 2019.
- The respondent has persistently delayed in paying rent since May 2019.
- The rent arrears in February 2020 were around £4330.
- The rent arrears at the date the application was made were around £7790.
- The rent arrears are not wholly or partly due to a failure in a relevant benefit.
- The respondent left the property around December 2020.

## Reasons

11. This is an undefended application for eviction. The application is for eviction on grounds 8, 11 and 12. The AT6 served by sheriff officer on 20 February 2020 was defective as it did not narrate the eviction grounds and part 3 was blank. The applicant subsequently lodged a 'paper apart' which was attached to the AT6. The tribunal was not satisfied that the respondent had been given appropriate notice and therefore ground 8 could not proceed. In relation to the other grounds, the tribunal was satisfied that it was reasonable to dispense with the notice in terms of s19(1)(b) of the Act. This was because the arrears are substantial, the respondent received the incomplete AT6 and notice to quit by sheriff officer, and the respondent has already left the property. The tribunal was satisfied that the arrears were not due to any delay or failure in payment of a relevant benefit. The tribunal was satisfied that it was reasonable in all of the circumstances to grant the eviction application. The applicant is concerned that although the respondent has left the property, she still retains keys and may return. Given the substantial arrears which have persisted since May 2019, the tribunal was satisfied it was reasonable to grant the eviction.

## 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.**



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Lesley A Ward Legal Member

8 April 2021

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Date