

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/18/1770**

**Re: Property at 38 Aberdour Street, Flat 0/2, Haghill, Glasgow, G31 3NJ (“the Property”)**

**Parties:**

**Mr Rene Schellekens, C/O Easy Let Properties Scotland Ltd, 789 Shettleston Road, Glasgow, G32 7NN (“the Applicant”)**

**Mr Thomas Johnstone, 38 Aberdour Street, Flat 0/2, Haghill, Glasgow, G31 3NJ (“the Respondent”)**

**Tribunal Members:**

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**Sarah O'Neill (Legal Member) and Leslie Forrest (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession should be granted in favour of the applicant.**

**Background**

An application was received on 13 July 2018 under rule 65 of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”) seeking recovery of possession of the property under Grounds 8, 11 and 12 as set out in schedule 5 of the 1988 Act.

The application included: the tenancy agreement; and a copy of the notice required under section 19 of the 1988 Act (“the AT6”). It also included a rent statement, showing the rent due as at 9 July 2018 to be £1950.

Notice of the hearing, together with the application papers and guidance notes, had been served on the respondent by sheriff officers on behalf of the tribunal on 30 August 2018. No written representations had been received from the respondent.

### **The Hearing**

A hearing was held on 18 September at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The applicant was represented by Ms Nicola Caldwell, paralegal at TC Young Solicitors, who gave evidence on his behalf. The respondent was not present or represented at the hearing. The tribunal was satisfied that the requirements of rule 24 (1) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a hearing had been duly complied with. It therefore proceeded with the hearing in the absence of the respondent, in terms of rule 29 of the 2017 rules.

### **Preliminary issues**

The tribunal noted that no form AT5 had been submitted with the applicant's application form. Ms Caldwell told the tribunal that this was because the application was on the assured tenancy grounds 8, 11 and 12, rather than section 33 of the 1988 Act. She produced a copy of the form AT5, which was dated 10 November 2017, to the tribunal.

The tribunal also noted that the short assured tenancy agreement was signed 'G. Armour' under the heading 'landlord signature', rather than by the applicant. It also noted that the tenancy agreement had been signed by the parties on 10 November 2017, while the tenancy agreement stated that the tenancy started on 9 November 2017. The tribunal noted that the form AT5 was also signed by the same person as the tenancy agreement, and clearly indicated at Part 2 that it was served by the prospective landlord's agent. The tribunal adjourned briefly to allow Ms Caldwell to call the landlord's agent, Easy Let Properties, where she spoke to Ms Gillian Armour, who confirmed that she had signed the tenancy agreement on the landlord's behalf. She had also confirmed that, while the tenancy agreement was dated 9 November 2017, the respondent had not come into the office to sign the paperwork until 10 November 2017.

Ms Caldwell referred on behalf of the applicant to the rent statement which was already before the tribunal, and produced an updated statement, which showed that a further two months' unpaid rent had been added to the rent account, which now totalled £2600 as at 9 September 2018. The statements showed that no rent payments had been made since 9 March 2018.

When asked by the tribunal whether she was aware of any issues relating to housing benefit or universal credit which may be relevant to the respondent's rent arrears, Ms Caldwell told the tribunal that neither she nor the landlord's agent was aware of any such issues. She told the tribunal that the tenant had provided no explanation to the landlord's agent as to why he had failed to pay the rent. He had made several calls to the letting agent's office to say that he would pay the rent, but had failed to do so, and the agent had found him difficult to contact.

## **Findings in Fact**

The tribunal made the following findings in fact:

- The applicant is the owner of the property.
- There was a tenancy in place between the applicant and the respondent. The tenancy commenced on or around 9 November 2017.
- The tenancy agreement between the parties had been signed by the parties on 10 November 2017, and commenced on 9 November 2017, running for six months until 10 May 2018. The AT5 form was in the prescribed format and had been signed by the respondent on 10 May 2018. Further to the clarifications sought by the tribunal as to the signature and date on the tenancy agreement as discussed above, the tribunal was therefore satisfied that there was a short assured tenancy in place between the parties.
- The monthly rent payable in terms of the current tenancy agreement was £325 per month.
- The AT6 contained the prescribed information and was dated 12 June 2018. There was evidence that the form AT6 had been served on the respondent by sheriff officer on 14 June 2018. The tribunal was satisfied that the form AT6 had been validly served on the respondent.
- As at both the date of service of the AT6 and the date of the hearing, the respondent was in rent arrears of at least 3 months.

## **Reasons for Decision**

Ground 8 as set out in Schedule 5 of the 1988 Act states:

‘Both at the date of service of the notice under section 19 of this Act, relating to the proceedings for possession and at the date of the hearing, at least three months’ rent lawfully due from the tenant is in arrears’.

In terms of section 18 and Schedule 5 of the 1988 Act, if the tribunal is satisfied that ground 8 is established, then (subject to subsection 3A), the tribunal is required to make an order for possession. Section 3A provides that where ground 8 is established, and the rent is in arrears as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit, the tribunal shall not make an order for possession unless the tribunal considers it reasonable to do so.

The tribunal is satisfied on the evidence before it that the requirements for ground 8 are established. There were at least three months’ rent due from the respondent both at the time the AT6 was served, and at the date of the hearing. There was no evidence before the tribunal of any housing benefit or universal credit issues to be considered in terms of section 18 (3A) of the 1988 Act. The tribunal is therefore

required to grant an order for possession under section 18 and ground 8 in Schedule 5 of the 1988 Act.

Given that the tribunal finds ground 8 to be established, it did not consider further whether grounds 11 and 12 were also established.

### **Decision**

The tribunal grants an order in favour of the applicant against the respondent for recovery of possession of 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.

Sarah O'Neill

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**Legal Member/Chair**

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**Date**

18/9/18