

**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/18/1828**

**Re: Property at Pittensorn Farmhouse, Murthly, Perthshire, PH1 4HW (“the Property”)**

**Parties:**

**Murthly & Strathbraan Estates, C/O Bidwells, 5 Atholl Place, Perth, PH1 5NE (“the Applicant”)**

**Mr Paul Viviani, Mrs Jacqueline Viviani, Pittensorn Farmhouse, Murthly, Perthshire, PH1 4HW (“the Respondents”)**

**Tribunal Members:**

**Colin Dunipace (Legal Member) and Leslie Forrest (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order should be made in terms of section 18 of the Housing (Scotland) Act 1988.**

**This Application called as a Hearing in Inveralmond Business Centre, Perth on 5 October 2018. At this Hearing the Applicant was represented by Ms Jane McNicol, Solicitor, and the Respondent, Mrs Jacqueline Viviani appeared to represent the interests of herself and her Co-Respondent.**

**This was an Application dated 18 July 2018 brought in terms of Rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations**

2017. With the Application the Applicant had enclosed copies of the Short Assured Tenancy Agreement, form AT5, Form AT6, section 11 Notice and executions of service. The Tribunal was satisfied that the appropriate procedures had been properly carried out. The Application had been raised by the Applicants seeking possession of the heritable subjects in terms of Section 18(6) of the Housing (Scotland) Act 1988 on Grounds 8, 11 and 12 of Schedule 5 of the aforementioned Act, the terms of which had been set out in full in the lease signed between the parties on 26 February 2016. The Applicants sought recovery of the subject on the following grounds, namely:

**Ground 8** - on the basis that as at the date of the Application that the rent payable in the sum of Eight Hundred Pounds (£800) Sterling per month was more than three months in arrears.

**Ground 11** – on the basis that the Respondent had persistently delayed in paying the rent lawfully due; and

**Ground 12** – on the basis that as at the date of the Application that the total arrears of rent were Six Thousand Four Hundred Pounds (£6,400) Sterling.

Prior to the Hearing no representations had been received from the Respondents.

The Tribunal was satisfied that the Application appeared to be in proper form and in compliance with the appropriate statutory provisions and rules of procedure.

The Hearing proceeded on 5 October 2018, at which time the Applicant's solicitor moved the Application on the basis of the foregoing Grounds. In this regard it was submitted by the Applicant's solicitor that the terms of section 18(3) of the Housing (Scotland) Act 1988 were mandatory and that an Order shall be made in the event that a Ground in terms of Part 1 of Schedule 5 of the aforementioned had been established, in the present case being Grounds 8, 11 and 12 of the aforementioned Schedule.

The Applicant's solicitor produced and updated Rent statement to the Tribunal indicating that the amount due in respect of outstanding rent was Eight Thousand Eight Hundred Pounds (£8,800) Sterling. The Respondent indicated that she had previously received a copy of this statement and did not take issue with its being lodged with the Tribunal, nor with its contents. The Applicant's solicitor submitted that the statement demonstrated that the respondents were in arrears of rent to the aforementioned extent and that demonstrated that the foregoing Grounds had been established.

The Respondent provided oral evidence on her own behalf. The respondent indicated that she had been paying her rent timeously by Standing Order until February 2018, when it was brought to her attention by the Applicants that she was four months in arrears of rent. The Respondent advised that she contacted her Bank, who indicated that due to a transcription error in the entry of bank account details, that whilst the rent payments had been taken from her account, that these sums had not been paid to the Applicants, but instead had been paid to another unspecified

account. The Respondent indicated that she had sought to remedy this matter with her bank, but due to ongoing issues with them, that the sums which were recovered were thereafter attributed to her outstanding overdraft rather than being sent to the Applicants. The Respondent indicated that this had caused financial difficulties for her, which were exacerbated by the fact that she had been the victim of a Six Thousand Pound fraud, and also by the fact that her husband and Co-Respondent's contractors had changed his payment terms to every 60 days rather than weekly.

The Respondent stated that she had secured additional work as a baker which should improve her financial position, and that her husband had also improved his employment status. The respondent indicated that she hoped to have cleared the arrears of rent by Spring 2019, and that in the event that this could not be done, that she expected to receive a lump sum from the sale of her interest in another property which should enable her to clear the rental arrears in full. The Respondent also stated that she had spoken to a representative of the Applicants and suggested that the tenancy could be transferred into the name of her father to ensure payment, or that she would be able to supply a guarantor in relation to the rental sums due.

In addition the Respondent also indicated that she had spent a considerable amount of money in refurbishing the property, including installing double glazing, improving the driveway and generally cleaning up the subjects. The Respondent advised that she lived at the property with her husband, 15 year old daughter and niece who had moved to live with her due to personal difficulties, and that both of these individuals were well settled in a local school. The Respondent advised that if she required to leave that this would impact negatively on her husband's business.

### **Findings in Fact**

1. The Applicant is the owner and landlord of the property Pittensorn Farmhouse, Murthly, PH1 4HW
2. The Respondents were the tenants of the property, which was leased from the Applicant by virtue of a Short Assured Tenancy dated 26 February 2016.
3. The rent in terms of the aforementioned lease was £800 per month payable monthly in advance.
4. The Respondents initially made timeous payments of rent until 1 October 2017 when payments stopped. The rental payments were also missed on 1 November, 1 December all 2017 and on 1 January, 1 February, 1 March , 1 April, 1 May, 1 June, 1 July, 1 August, 1 September and 1 October all 2018. Payments of £800 each were made by the Respondents on 3 April and 4 June 2018.
5. A Notice to Quit was served on the Respondents on 19 February 2018.

6. As at the date of the Hearing the outstanding sums due in respect of rent was in the sum of Eight Thousand Eight Hundred Pounds (£8,800) Sterling

### **Reasons for Decision**

The Respondent provided evidence on behalf of herself and her husband, indicating that due to financial difficulties, which were not all of her own making that they had been unable to make timeous payment of rent. The Tribunal was however satisfied that the terms of Ground 8 of the Act had been established by the Applicants and that the Order for possession was appropriate in terms of section 18 of the Act.

### **Decision**

The Tribunal determined that an Order for Possession of the property should be made in favour of the Applicants.

### **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.

**Colin Dunipace**

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**Legal Member/Chair**

5/10/10  
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**Date**