



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 18 Housing (Scotland) Act  
1988**

**Chamber Ref: FTS/HPC/EV/18/1336**

**Re: Property at 26 Elderpark Grove, Glasgow, G51 3LY (“the Property”)**

**Parties:**

**Mr Usman Rafiq, c/o The Property Store, 111 Albert Drive, Glasgow, G41 2SU  
 (“the Applicant”)**

**Mr Iain Rennie, 26 Elderpark Grove, Glasgow, G51 3LY (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and Mary Lyden (Ordinary Member)**

**Decision (in absence of Respondent)**

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

**Background**

1. By application dated 29 May 2018 the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property (Procedure) Regulations 2017 (“the regulations”). A copy of a short assured tenancy agreement dated 17 April 2015, a copy AT5 Notice, a copy AT6 notice dated 24 April 2018 together with Sheriff officer certificate of service and a copy notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 and a rent statement showing a balance owing of £3578.23 were lodged with the application. An application for an order for payment of the arrears under tribunal reference FTS/HPC/CV/18/1337 was also lodged on that date.
2. By Notice of Acceptance dated 9 July 2018 a legal member with delegated powers accepted the application and referred it to a Tribunal hearing on 28

August 2018. The application together with supporting documentation and a letter intimating the hearing were served on the Respondent by Sheriff Officer on 2 August 2018.

3. Both cases called before the Tribunal on 28 August 2018. The Applicant was represented by Mr Michael Ritchie, solicitor. The Respondent was personally present but unrepresented. At the hearing the Tribunal granted the Applicant's request to amend the application to change the name of the Applicant from "The Property Store" to "Mr Usman Rafiq", the owner and landlord of the property. The Tribunal also granted the Applicant's request to amend the basis of the application from Rule 66 to Rule 65 of the Regulations. The Tribunal also allowed the sum sought in the related payment case to be amended to £5153.23. Thereafter the Tribunal granted the Applicant's request to adjourn the hearing to enable the Respondent to obtain legal representation. The hearing was adjourned to 19 September 2018 at 2pm at the Tribunals Centre, 20 York Street, Glasgow. Both parties were advised of the date and time of the adjourned hearing and letter was issued to them confirming those details.
4. The case called before the Tribunal for a hearing on 19 September 2018. Mr Ritchie again appeared on behalf of the Applicant, accompanied by Mr Atif Ahmed from The Property Store. The Respondent did not attend and was not represented. No written representations were received by the Tribunal from either party in advance of the hearing.

### **The Hearing**

5. Mr Ritchie advised the Tribunal that the Applicant has had no contact from the Respondent since the last hearing and no contact from Govan Law Centre, whom the Respondent had indicated he intended to instruct. The Tribunal was also advised that the arrears of rent have increased and now stand at £5678.23. An updated rent statement for the period to 17 September 2018 was produced which confirmed this as the balance outstanding. It is understood that the Respondent remains in occupation of the property.
6. The Tribunal asked Mr Ritchie about the Respondent's circumstances and, in particular, whether rent had at any time been paid by way of housing benefit, Mr Ritchie advised that the Applicant is unaware of the Respondent's present circumstances. He provided 2 letters from Glasgow City Council Housing Benefit section. The first, dated 15 August 2017, states that Housing benefit payments were to be made at a rate of £273,12 per four weeks. The second, dated 12 February 2018, states that benefit entitlement has ended with effect from 19 February 2018. No payments to the rent account have been received since December 2018.
7. Mr Ritchie advised the Tribunal that he was seeking an order for possession of the property in terms of Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act"). He stated that he seeks recovery of possession in terms of ground 8 of schedule 5 of the Act, failing which in terms of ground 11 and/or ground 12. In support of this request he advised the Tribunal that the requirements of

Section 18 and 19 and Schedule 5 ground 8 of the 1988 Act have been met. The monthly rent charge is £525. The arrears of rent owing at the time of service of the AT6 were £3578.23. The arrears currently owing as at the date of the hearing are £5678.23. On both occasions therefore, the arrears exceed 3 months' rent. Mr Ritchie further advised that the tenancy agreement provides for recovery of possession of the property on the basis of ground 8 as required by Section 18(6) of the 1988 Act. Lastly, he advised the Tribunal that there is no information or evidence to suggest that the non-payment of rent is in any way connected to a delay or failure in the payment of housing benefit or universal credit in terms of section 18(3A) of the Act.

8. The Tribunal proceeded to consider the application.

### **Findings in fact**

9. The parties entered into a short assured tenancy agreement in relation to the property on 17 April 2018. The Respondent remains in occupation of the property.
10. The monthly rent charge due in terms of the tenancy agreement is £525
11. The Applicant served a notice in terms of section 19 of the Act on the Respondent on 1 May 2018. At the date of service of the notice the arrears of rent were £3578.23
12. The arrears of rent owing at the date of the hearing on 19 September 2018 are £5678.23

### **Reasons for decision**

13. The Tribunal notes that the Respondent had been personally present at the previous hearing and was aware of the date, time and location of the hearing. No representations or documentation have been lodged with the Tribunal by him or on his behalf.
14. The Tribunal considered whether the legal requirements of the 1988 Act had been met. The Tribunal is satisfied from the submission made on behalf of the Applicant and the documentation lodged with the application and at the hearing that ground 8 of schedule 5 of the Act has been established, namely that "Both at the date of the 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". The Tribunal is also satisfied that the requirements of Section 18 and 19 of the 1988 Act have been met. A valid notice in the correct format in terms of section 19 was served on the Respondent on 1 May 2018. The terms of the tenancy agreement provide for it to be brought to an end in terms of ground 8 as required by section 18(6) of the 1988 Act. No evidence had been produced to suggest that the arrears

are as a result of a delay of failure in payment of housing benefit or universal credit in terms of Section 18 (3A) of the 1988 Act. A valid notice in terms of section 19 of the 1988 Act has been sent to the local authority.

**15.** Section 18(3) of the 1988 Act stipulates that " If the First-tier Tribunal is satisfied that any of the grounds in Part I of Schedule 5 to this Act is established then, subject to subsections 3A and 6 below the Tribunal shall make an order for possession". Ground 8 falls within Part I of the schedule. In all the circumstances the Tribunal is satisfied that an order for recovery of possession of the property must be made in favour of the Applicant.

**16.**As the Tribunal is satisfied that an order for possession should be granted in terms of ground 8 of schedule 5 of the 1988 Act, it did not require to consider the application in terms of grounds 11 and 12 of the schedule.

### **Decision**

**17.** The Tribunal grants an order for recovery of possession of the property in favour of the Applicant.

**18.** The decision of the Tribunal is unanimous

### **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.**

**Josephine Bonnar**

**19 September 2018**

**Légál Member/Chair**

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