

**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/19/1509**

**Re: Property at 1F3, 15 Westfield Road, Edinburgh, EH11 2QS (“the Property”)**

**Parties:**

**Mrs Guita Tavakoli, 20 Barnton Park Drive, Edinburgh, EH4 6HF (“the Applicant”)**

**Mr Jerzy Bibro, Ms Beata Orłowska, 1F3, 15 Westfield Road, Edinburgh, EH11 2QS (“the Respondents”)**

**Tribunal Members:**

**Shirley Evans (Legal Member), Eileen Shand (Ordinary Member) and Carolyn Hirst (Ordinary Member [Reviewer])**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for repossession of the Property be made under Section 18 of the Housing (Scotland) Act 1988. The order will be issued to the Applicant after expiry of 30 days mentioned below in the right to appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents.**

The order will include a power of Officers of Court to eject the Respondents and family, servants, dependants, employees and others together with their goods, gear and whole belongings further and from the Property and to make the same void and red that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

**Background**

1. This is an application for an order for recovery of possession of the Property made in terms of Rule 65 of the First –tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations).

2. The Tribunal held a Case Management Discussion (“CMD”) on 9 October 2019. At that CMD the Applicant was represented by Miss Morrison from TC Young and the first named Respondent by Mr Wilson from CHAI. There was no appearance by or on behalf of the second named Respondent. Miss Morrison moved the Tribunal to grant an order of possession and whilst Mr Wilson had no opposition, was not prepared to consent to the order of repossession, the Tribunal had a number of concerns with regard to the end date of the tenancy, the validity of the Notice to Quit and the ability of the Applicant to rely on the grounds of repossession in the AT6 during the contractual tenancy with reference to Section 18(6) of the Housing (Scotland) Act 1988. The Tribunal accordingly fixed a hearing. The Tribunal’s Notes on the CMD are referred to.

### Hearing

3. The Tribunal proceeded to a Hearing on 28 November 2019. The Applicant was represented by Miss Rashid from TC Young and the first named Respondent by Mr Wilson from CHAI. There was no appearance by or on behalf of the second named Respondent.
4. Miss Rashid moved for the order for repossession to be granted. Mr Wilson’s position was that he had no opposition to the order, but he could not consent to the order being granted. Miss Rashid asked the Tribunal again to grant the order given there was no opposition to the order and no dispute with regard to the facts and asked that no evidence be led and that she be allowed to proceed only on legal submissions.
5. The Tribunal pointed out that it had been unable to make any findings in fact at the last CMD and that without evidence being led it could not make a determination that there was in the circumstances valid grounds of repossession particularly against the background where there was dubiety over the termination date of the tenancy. Ms Rashid explained that parties had prepared a Joint Minute of Admissions. This essentially covered the issues in relation to the termination date of the tenancy agreement. After a short adjournment during which the Tribunal considered the draft Joint Minute parties entered into a Joint Minute of Admissions which was lodged with the Tribunal. The Tribunal confirmed in the circumstances it was therefore prepared to make findings in fact to reflect the Joint Minute of Admissions.
6. Thereafter Miss Rashid asked the Tribunal to accept that the Notice to Quit which had been served on 20 March 2019 bringing the tenancy to an end on 11 May 2019 was valid, the 11 May 2019 being the *ish* date.
7. She referred the Tribunal to Section 18(3) of the Housing (Scotland) Act 1988. This in turn referred to Section 18(6) of the 1988 Act. Section 18(6) provides that an assured tenant’s right to security of tenure means there can be no possession order during a contractual assured tenancy unless the tenancy agreement makes specific reference for it to be brought to an end during that contractual tenancy on certain grounds of repossession under Schedule 5 of the 1988 Act. In her submission she was able to rely on the AT6 which had

been served during the contractual period of the tenancy and became "live" on the ish date, the same date the tenancy was reduced to a statutory assured tenancy by the Notice to Quit.

8. The Tribunal questioned whether she could rely on a ground of repossession during the contractual period when there was no reference to the grounds in the actual agreement itself. Whilst the Tribunal did not question that an AT6 could be served during the contractual period, which was an entirely different matter from relying on a ground of repossession during the contractual period which was not written within the actual agreement itself. In other words did section 18(6) allow a landlord to rely on a ground of repossession during the contractual period which was not written in the tenancy agreement?
9. Miss Rashid referred the Tribunal to Section 19(6) of the 1988 Act and submitted she could rely on the AT6 whether served during the original contractual term or during the statutory period. The Tribunal made it clear that it accepted the AT6 could be served during the contractual period, but still questioned the ability to rely on a ground of possession; there was a distinction that could be drawn between Section 18(6) which related to the grounds of repossession and section 19(6) which related to the AT6.
10. Miss Rashid then made submissions on her *esto* position by reference to section 19(1)(b) of the Act which would allow the Tribunal to use its discretion and dispense with the requirement to serve an AT6. The Tribunal clarified that essentially her position was she wanted to ignore the original AT6 to allow the Tribunal then to use the dispensing power it had. That being the case she sought to rely on Grounds 11 and 12 of Schedule 5 of the 1988 Act, both of which related to rent arrears and submitted that in all the circumstances it was reasonable to evict. In all the circumstances she moved the Tribunal to dispense with the requirement for an AT6.
11. With regard to reasonableness she submitted that the arrears were £6000 and that no rent had been paid for a year. Further both she and her Applicant explained to the Tribunal that there were also mortgage repossession proceedings which the Applicant was facing in Edinburgh Sheriff Court. Those proceedings had been adjourned to 19 December 2019. Miss Rashid explained that there were overall financial difficulties and the Applicant explained that her husband did not have a pension and that they had put all their savings into the Property. They were in debt as a result of the rent not being paid and had lost everything as a result. The arrears were unlikely to be recoverable. Miss Rashid also referred to the Sheriff Officers report she had lodged which cast some doubt as to whether anyone still lived in the Property. Miss Rashid submitted that in the circumstances it was reasonable to make the order.
12. Mr Wilson admitted that the arrears were £6000 and that no rent had been paid for a year. He was unable to comment as to whether his client still lived in the Property.

## **Findings in Fact**

13. The Applicant is the landlord of the Property.
14. On 11 August 2014 the Applicant entered into a tenancy agreement with the second named Respondent. The tenancy agreement was for a period of 12 months from 11 August 2014 to 11 August 2015. Clause 9 of the tenancy agreement allowed the agreement to continue monthly thereafter from 11 August 2015.
15. There was a typographical error in Clause 7 of the tenancy agreement which stated a termination date of 11 August 2014 and not 11 August 2015.
16. The tenancy agreement did not set out any grounds of recovery of possession under Schedule 5 of the Housing (Scotland) Act 1988.
17. The second named Respondent requested the first named Respondent be included in the tenancy agreement as a joint tenant. The first named Respondent had moved into the Property. The Applicant was agreeable to this.
18. On 15 November 2014 the Applicant and the Respondents entered into a new joint tenancy agreement on the same terms. The termination date of the joint tenancy was 11 August 2015 and monthly thereafter.
19. On or about December 2018 the Respondents stopped paying rent. Current arrears are £6000.
20. The Applicant served a Notice to Quit on the Respondents on 20 March 2019. The Notice to Quit brought the contractual tenancy to an end on 11 May 2019. The 11 May 2019 was the *ish* date.
21. The Applicant served an AT6 relying on Grounds 8, 11 and 12 of Schedule 5 of the 1988 Act on 20 March 2019. The AT6 became live on 11 May 2019.
22. A Notice under Section 11 of the Homelessness Scotland Act 2003 was served on Edinburgh City Council.

## **Reasons for Decision**

23. In terms of Section 18(3), subject to Section 18(6) of the Housing (Scotland) Act 1988 the Tribunal shall make an order for possession if satisfied that any of the Grounds of Possession as set out in Part 1 of Schedule 5 are satisfied.
24. In terms of Section 18(6) of the Housing (Scotland) Act 1988 the Tribunal shall not make an order for recovery of possession of an assured tenancy, not being a statutory assured, unless amongst other Grounds, the Grounds of

repossession is Grounds 8, 11 or 12 and the terms of the tenancy agreement allow for it to be brought to an end on the ground in question.

25. In terms of Section 19(1) the Tribunal has the power to dispense with the requirement for an AT6.

26. The Tribunal considered the submissions made on behalf of both parties. The Tribunal was not satisfied that the Applicant was entitled to rely on Grounds 8, 11 or 12 during the contractual period of the tenancy. The Tribunal therefore considered that the AT6 served on 20 March 2019 had no effect. However the Tribunal noted that there were substantial arrears and that no rent had been paid for a year. The Tribunal also noted the financial difficulties and pressure the Applicant was under by not having the rent paid. In all the circumstances the Tribunal was prepared to use its discretion and dispense with the requirement to serve the AT6 in terms of Section 19(1)(b) of the Housing(Scotland) Act 1988. The Tribunal considered it was reasonable to grant the order sought. In the circumstances the Applicant had established a case under Grounds 11 and 12 of Schedule 5 and was prepared to grant an order of repossession under Section 18 of the 1988 Act.

### 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

Shirley Evans  
Legal Member/Chair

28 November 2019.  
Date