



**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/22/3516

**Re: Property at 1 Hughston Cottage, Muir of Ord, Ross-shire, IV6 7RS (“the
Property”)**

Parties:

**Burton Property Trust, Reay House, 17 Old Edinburgh Road, Inverness, IV2 3HF
 (“the Applicants”)**

**Mr Kenneth MacIntyre, 1 Hughston Cottage, Muir of Ord, Ross-shire, IV6 7RS
 (“the Respondent”)**

Tribunal Members:

George Clark (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application should be decided without a Hearing
and made an Order for Possession under Section 18 and Grounds 11, 12 and 14
of the Housing (Scotland) Act 1988**

Background

By application, dated 27 September 2022, the Applicants sought an Order for Possession of the Property in terms of Section 18 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Grounds relied on were Grounds 11, 12, 13 and 14 of Schedule 5 to the 1988 Act.

The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Applicants as landlords and the Respondent and Ms Pamela Keith as tenants, commencing on 1 April 2017 and, if not terminated by either party on 2 April 2018, continuing thereafter until terminated by two months’ notice given by either Party, a Form AT5 Notice, dated 20 March 2017, a Form AT6 Notice, dated 7 September 2022, given under Section 33 of the 1988 Act, specifying the Grounds under which the Applicants were seeking an Order for Possession and that

proceedings would not be begun before 23 September 2022, and a Minute of Agreement between the Parties, releasing Ms Pamela Keith from her obligations under the Tenancy Agreement with effect from 31 May 2021, with the Respondent being solely responsible for the obligations of the tenant thereafter. The Applicant's representatives, Galbraith, Inverness, provided the Tribunal with a Rent Statement on 6 January 2023, showing arrears of £4,110 as at 1 December 2022, with no rent having been paid since July 2022. The original rent under the Tenancy Agreement was £600 per month, but the Rent Statement indicated that it had been increased progressively and that, from 1 December 2022, was £700 per month.

In the application, the Applicants' representatives referred to and provided photographs taken at a partial inspection of the Property on 23 August 2022. The photographs indicated that the tank was resting on cement bags, the boiler appeared to have been taken apart and its motor removed, the side access door hinges were broken, the front door lock broken, and the back door frame damaged and no longer lockable.

On 19 January 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 9 February 2023. The Respondent did not make any written representations to the Tribunal.

A Case Management Discussion scheduled for 2 March 2023 was postponed, as there was no evidence that the application had been served by the Tribunal on the Respondent. The relevant papers were subsequently served by sheriff officers and the date of the Case Management Discussion intimated to him on 27 March 2023.

Case Management Discussion

A Case Management Discussion was held on the afternoon of 25 April 2023. The Applicants were represented by Ms Alex Davies of Galbraith, Inverness. The Respondent was not present or represented. Ms Davies told the Tribunal that the rent arrears are currently £6,910 and that the Respondent has refused to engage with their efforts to contact him to discuss arrears and has failed to answer the door when they have called at the Property. He has not responded to telephone or text messages or to emails. They have also received intimation from SSE that the electricity meter has not been topped up in some time and are concerned that the Property is not being properly heated and that its condition may be deteriorating. Ms Davies asked the Tribunal to decide that in view of the amount of the arrears, the length of time since the Respondent had paid any rent and his refusal to respond to attempts to contact him to discuss the situation, the evidence they had provided regarding the oil tank and boiler and other damage to the Property, and their concerns that the condition of the Property may be deteriorating, it would be reasonable to make an Order for Possession. She understood that the Respondent lives in the Property on his own.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision.

The Tribunal was satisfied that it had before it sufficient information and documentation to enable it to decide the application without a Hearing.

Section 18(1) of the Act states that the Tribunal shall not make an Order for Possession of a house let on an Assured Tenancy except on one or more of the Grounds set out in Schedule 5 to the Act. By Section 18(3) of the Act, if the Tribunal is satisfied that any of the Grounds in Part I4 of Schedule 5 is established, the Tribunal shall not make an Order for Possession unless it considers it reasonable to do so.

The application was made under Grounds 11 and 12 of Schedule 5 to the 1988 Act. Ground 11 applies where the tenant has persistently delayed paying rent which has become lawfully due, and Ground 12 covers the situation where some rent is unpaid on the date on which the proceedings are begun and on the date of service of the Form AT6 Notice. Both Grounds are subject to the reasonability test. The view of the Tribunal was that there was clear evidence of delay in payment of rent over a period of many months, satisfying the requirements of Ground 11 and that there was no doubt that some rent was due at both the relevant dates for Ground 12.

Having considered very carefully the evidence before it and, taking into account in particular the level of rent arrears and the fact that no payments had been made since July 2022, together with the complete failure on the part of the Respondent to engage with the Applicants' representatives to discuss the arrears, it would be reasonable to make an Order for Possession under Grounds 11 and Ground 12 of Schedule 5 to the 1988 Act.

Ground 14 of Schedule 5 to the Act states that it is a Ground for Possession that "the condition of the house has deteriorated...owing to acts of waste by, or the neglect or default of the tenant".

The Tribunal noted that the Applicants had been unable to carry out an internal inspection of the first floor of the Property, but that they had ascertained that the oil boiler had been taken apart and its motor removed and that there was evidence of alternative fuels to kerosene being burned through the boiler. The oil tank was sitting on cement bags, the access door hinges and front door lock were broken, the back door was damaged and could not be locked. The Respondent did not make any written representations to the Tribunal to contest the evidence provided by the Applicants and was not present or represented at the Case Management Discussion.

Having considered the evidence before it, the Tribunal decided that the condition of Property had deteriorated owing to acts of waste by the tenant. The Tribunal was particularly concerned that the Respondent appeared to have dismantled the boiler and might be using fuel other than kerosene. This represented a potentially dangerous situation, and the view of the Tribunal was that it would be reasonable to make an Order for Possession under Ground 14.

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.



Legal Member/Chair

18 May 2023
Date