



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)  
Act 2014**

**Chamber Ref: FTS/HPC/EV/22/4477**

**Re: Property at Smith Cottage East, Mains Of Cargill, Meikleour, Perthshire, PH2  
6DU (“the Property”)**

**Parties:**

**Mr Stanley Livingston, Cluaran House, St Martins, Balbeggie, Perthshire, PH2  
6AL (“the Applicant”)**

**Mrs Linda Finlayson, previously residing at Smith Cottage East, Mains Of  
Cargill, Meikleour, Perthshire, PH2 6DU and whose current whereabouts are  
unknown (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Angus Lamont (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that an order against the Respondent for possession of  
the Property at Smith Cottage East, Mains Of Cargill, Meikleour, Perthshire, PH2  
6DU be granted. The order will be issued to the Applicant after the expiry of 30  
days mentioned below in the right of appeal section unless an application for  
recall, review or permission to appeal is lodged with the Tribunal by the  
Respondent. The order will include a power to Officers of Court to eject the  
Respondent and family, servants, dependants, employees and others together  
with her goods, gear and whole belongings furth and from the Property and to  
make the same void and redd that the Applicant or others in his name may enter  
thereon and peaceably possess and enjoy the same.**

**Background**

- 1. By application dated 22 December 2022, the Applicant’s solicitor applied to  
the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) for an order for recovery of possession of the Property in terms of  
Rule 65 the First-tier Tribunal for Scotland Housing and Property Chamber  
(Procedure) Regulations 2017 (“the Regulations”). The action is based on the  
Respondent’s rent arrears.**

2. The application was accompanied by a copy of an Assured Tenancy between the parties dated 23 December 1999, a Notice to Quit and an AT6 both dated 26 July 2022 together with a Sheriff Officers' Execution of Service dated 28 July 2022, and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2002 to Perth and Kinross Council dated 17 October 2022 and various text messages between the parties.
3. The Tribunal attempted to serve the application on the Respondent by way of Sheriff Officers who reported they could not find the Respondent at the Property. Accordingly, the application was served on the Respondent by advertisement in terms of Rule 6A of the Regulations. The Execution of Service was received by the Tribunal.

### **Case Management Discussion**

4. The Tribunal proceeded with a Case Management Discussion on 5 June 2023 by way of teleconference. The Applicant was represented by Mr Morton from Miller Hendry, solicitors. The Applicant was also in attendance. The Respondent was not present or represented despite the Tribunal starting 10 minutes late to allow the Respondent time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded in her absence.
5. Mr Morton asked the Tribunal to grant an Order for eviction. He stated the requirements of Grounds 8, 11 and 12 of schedule 5 of the Housing (Scotland) Act 1988 ("the 1988 Act"). The Tribunal however questioned the validity of the Notice to Quit which purported to reduce the tenancy to a statutory assured tenancy on 23 September 2022 when the tenancy was continuing on a yearly basis to 23 December 2022. The Tribunal referred Mr Morton to Section 18(6) of the 1988 Act.
6. Mr Morton submitted the Applicant had complied with the pre action requirements, but other than referring to the text messages lodged could not advise whether the Applicant had specifically complied with the requirements e.g. to sign post the Respondent to advise agencies as required in terms of The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 ("the 2020 Regulations"). Mr Morton invited the Tribunal to hear from the Applicant himself. Mr Livingstone advised the Tribunal that the Respondent had not paid rent for some time, that he had tried to call her in numerous occasions, but that she never answered; this had been going on for over two years. She was not in the Property.
7. The Tribunal enquired what the current arrears were. Mr Morton did not have that information to hand. The Tribunal accordingly granted a short continuation for him to get instructions and to be in a position to fully address the Tribunal. After the adjournment Mr Morton advised the current arrears were £5740. With regard to the Notice to Quit Mr Morton submitted that in terms of Section 19 there was no need for it to tie up with the ish date. The

Tribunal clarified that Section 19 related to the service of the AT6 and not the Notice to Quit and again referred him to Section 18(6). He submitted he was looking to terminate the contractual tenancy by reliance on Section 18(6) and would accept the position if the Tribunal found the Notice to Quit to be invalid. With regard to reasonableness, he submitted that the Property had been abandoned. The Respondent had not lived there for some time and appeared unlikely to return. Mail had piled up.

### **Reasons for Decision**

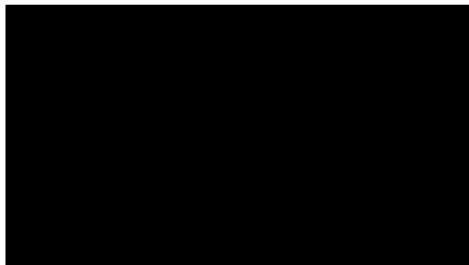
8. The Tribunal considered the documents lodged by the Applicant and Mr Morton's submissions. The Tribunal was not satisfied that the Notice to Quit was valid as it did not tie up with the termination date of the tenancy, being 23 December 2022. However, as the AT6 relied on the three rent arrears Grounds 8, 11 and 12, the Tribunal was satisfied that it had power to grant the order for eviction in terms of Section 18 (6) of the 1988 Act. The Tribunal accepted the arrears were £5740 and that the Applicant had complied with the 2020 Regulations, bearing in mind the Respondent had not engaged with him at all. She had abandoned the Property. Accordingly, the Tribunal found that it was reasonable to evict.

### **Decision**

9. The Tribunal granted an order for repossession. The decision of the Tribunal was 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.**



Legal Chair

5 June 2023

Date