



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber)**

**Chamber Ref: FTS/HPC/EV/23/4550**

**Re: Property at 15 Chesser Loan, Edinburgh, EH14 1SY (“the Property”)**

**Parties:**

**Mr Andrew McPheely, Mrs Margaret McPheely, 14 Chesser Loan, Edinburgh,  
EH14 1SY (“the Applicant”)**

**Mr James Kelly, 15 Chesser Loan, Edinburgh, EH14 1SY (“the Respondent”)**

**Tribunal Members:**

**Virgil Crawford (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**BACKGROUND**

1. The Applicant let the Property to the Respondent during September 2009. It was a matter of agreement between the Parties that there was a lease in place although the written lease document appears to be no longer available.
2. The rent payable initially was £650.00 per calendar month. That was increased to £700 per calendar month in April 2020.
3. With effect from April 2022 the Applicant fell into arrears of rent. While there was a dispute between the Parties in relation to the exact amount outstanding, the Applicant accepted no payment had been made by him for some time.

4. The Tribunal has a separate application before it seeking an order for payment of rent arrears.
5. The Applicant served a notice to quit upon the Respondent.
6. A notice in terms of section 19 of the Housing (Scotland) Act 1988 (“the 1988 Act”) – commonly referred to as a form AT6 – was served upon the Respondent. That notice intimated that an application for an eviction order may be made under grounds 11 and 12 of schedule 5 of the 1988 Act.
7. A notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority.

## **THE CASE MANAGEMENT DISCUSSION**

8. A Case Management Discussion was assigned to be conducted by teleconference at 10:00am on 18<sup>th</sup> March 2024. The Applicants were represented by Miss J Anderson of Messrs Clarity Simplicity Ltd, Solicitors. The Respondent participated personally.
9. The Respondent initially intimated that he wished a postponement of the Case Management Discussion. He advised that he had various medical issues which had affected his ability to prepare. Upon further discussion, however, it became clear that, in relation to the eviction order being requested, the Respondent did not oppose the granting of an order, the only point of dispute was the date upon which any eviction should become enforceable.
10. The Respondent advised the Tribunal that he has, in fact, already been offered alternative accommodation by the local authority. He has accepted the offer of alternative accommodation and, therefore, in principle, did not oppose an order for eviction. It was clarified that, when he was asking for a postponement, it was to afford him sufficient time to physically move his personal possessions. He advised there was a significant amount of personal possessions, to include various items of sentimental value. Because of his medical problems he would be physically unable himself to move various items. He would require assistance from his two children, a daughter who is in 6<sup>th</sup> year at school and a son who is in 4<sup>th</sup> year. Both of his children, however, are approaching the exam period and he was concerned about, firstly, the time they would have available to assist him in moving his personal possessions and, secondly, interfering with their exam preparation and exam timetable.
11. The Tribunal allowed an adjournment of the Case Management Discussion to enable Miss Anderson to obtain instructions from her clients in relation to the possibility of an eviction order being granted with the date of enforcement being deferred until after the Respondent’s children’s exams. Prior to the adjournment it was ascertained that the school exams would all be completed by end of May 2024.

12. Following an adjournment, Miss Anderson advised that, having taken instructions from the Applicants, they would be content with an eviction order being granted and the date of enforcement being the end of May. The Respondent also advised that, if he was able to vacate the premises before the end of May, he would do so and return the keys thereafter.
13. On the basis of the agreement reached between the Parties, the tribunal granted an eviction order with the date of enforcement being deferred until 12 noon on 30<sup>th</sup> May 2024.

## **DECISION**

The Tribunal granted an order against the Respondent for possession of the Property under section 18 and grounds 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988.

Order not to be executed prior to 12 noon on 30 May 2024

## **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.**

# V Crawford

**18 March 2024**

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**Legal Member/Chair**

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**Date**