



Decision and statement of Reasons of the First Tier Tribunal (Housing and Property Chamber)

Under Rule 8 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ‘the Rules’.

In respect of an application by Mr James Taylor in terms of rule 65 of the rules.

At Glasgow on the 12 June 2024, Lesley Anne Ward, legal member of the First –Tier Tribunal ‘the Tribunal’ with delegated powers of the Chamber President, rejected the above application in terms of Rule 8(1)(a) of the Rules.

1. This is an application by Mr James Taylor, owner of the property at flat 02/02, 46 Brownhill Road Mansewood Glasgow G43 2AE ‘the property’, for recovery of possession of the property in terms of Rule 65 on ground 11, 12, 13 and 15 of schedule 5 of the Housing (Scotland) Act 1988. The application was made on his behalf by Ms Joanne Hogg of Stodarts Solicitors. There was a second application in respect of rent arrears.
2. The application was dated 15 April 2024 and received by the Tribunal on 16 April 2024.
3. The application was accompanied by the following:
 - Tenancy agreement
 - AT6 and paper apart
 - Section 11 notice
 - Rent statement
 - AT6
 - Text and email exchanges
 - Notice to quit
4. The inhouse convenor reviewed the application and the Tribunal wrote to the applicant’s representative on 8 May 2024 as follows:

A legal member of the Tribunal with delegated powers of the Chamber President has considered the application and has determined that the following information requires to be provided before the application can progress:

(1). Please provide your submissions on the validity of the notice to quit, given that it only provides 2 weeks' notice. Please consider the terms of section 112 of the Rent (Scotland) Act 1984.

(2). The rent statement provided does not make it clear how the sum sued for has been calculated. Please provide a clear statement with columns for rent due, rent paid and a running total of arrears. Please respond within 14 days. Upon receipt of the above information, a decision can then be taken on whether the application is valid and whether it should be accepted and referred to the tribunal for full determination. If you fail to provide the necessary information the Tribunal may reject your application. Please reply to this office with the necessary information by 22 May 2024. If we do not hear from you within this time, the President may decide to reject the application.

5. The applicant's representative responded on 8 May 2024 as follows:

I refer to your email below and I have forwarded your request for an updated Rent Statement to my client. I shall therefore forward that to you under separate cover once I have it.

In relation to the Notice to Quit, I have not formally served a Notice to Quit. I have served notice via AT6 in terms of s19 of the Housing (Scotland) Act 1988 providing the required 2 weeks notice as a result of the rental arrears.

The tenancy itself renews annually on 18th October and it is intended that a Notice to Quit and Section 33 notice will be served at that point to prevent tacit relocation, and bring the contractual tenancy to an end.

The letter that was sent to the client does take the form of a notice to quit, and I see that I have omitted to remove the header "Notice to Quit" from it. However, this was issued simply because my client felt that the AT6 alone was not sufficiently clear to his tenant what he required insofar as vacating the property, removing items, handing in keys etc were concerned and so I amended a notice to quit to include this information. Apologies for any confusion.

6. The Tribunal sent a further request for information on 24 May 2023 as follows:

It is not clear that the terms of the tenancy agreement would allow the application to proceed without a notice to quit in terms of section 18(6) of the Housing (Scotland) Act 1988. Please provide your representations in this regard.

7. The applicant's representative responded on 28 May 2024 as follows:

Clause 1 of the Short Assured Tenancy indicates that an AT5 has been issued, and the Tenant acknowledges receipt of the same. It is further declared here that the Tenant acknowledges the tenancy can be brought to an end under the terms of grounds 9-17 in Schedule 5 of the 1988 Act. In terms of Clause 8.3 of the Tenancy Agreement, the tenancy may be brought to an end as a result of non-payment of rent or non-observance of any other provision in terms of the security. In our view therefore, all of this entitles our client to rely on grounds 11 and 12 which relate to non-payment of rent, and ground 13 in relation to the nuisance being caused by the tenant which is properly covered by the tenant's obligations under Clause 2.6 of the Tenancy Agreement.

In terms of Section 18(6) of the Housing Scotland Act 1988, I believe this now satisfies both parts (a) and (b) on the basis that the tenancy makes provision for the tenancy to be brought to an end in these circumstances and the grounds for possession being relied upon are not those excluded in terms of Clause 18(6)(a).

In any event, as I previously explained the tenancy renews annually on 18th October unless brought to an end by either party. Accordingly, this tenancy has not yet reached its ish date which would then necessitate a Notice to Quit. In order to try and avoid further correspondence on this point, I have now arranged for a Notice to Quit and Section 33 Notice to be served on the tenant, which will bring the contractual tenancy to an end on 17th October 2024, which is the next ish date. Copies of those notices and proof of service are attached but as previously advised, in my view, my client is entitled to seek recovery of possession on the basis of the ground set out in schedule 5 given there has been a breach of tenancy, prior to ending the contractual tenancy.

8. Section 18(6) of the Act allows the Tribunal to grant an order for recovery of possession where a contract has not been terminated. As no notice to quit has been served, the contract has not come to an end and section 18(6) could therefore apply.
9. Section 18 of the Act provides :

Orders for possession.

(1)The [F1First-tier 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 this Act.

(2)The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.

F2(3).

F3(3A).

(4)If the [F4First-tier Tribunal] is satisfied that any of the grounds in [F5Part I or II] of Schedule 5 to this Act is established, [F6the Tribunal] shall not make an order for possession unless [F6the Tribunal] considers it reasonable to do so.

[F7(4A)In considering for the purposes of subsection (4) above whether it is reasonable to make an order for possession on Ground 11 or 12 in Part II of Schedule 5 to this Act, the [F8First-tier Tribunal] shall have regard, in particular, to]—

[F9(a)]the extent to which any delay or failure to pay rent taken into account by the [F8Tribunal] in determining that the Ground is established is or was a consequence of a delay or failure in the payment of relevant housing benefit [F10or relevant universal credit] [F11, and

(b)the extent to which the landlord has complied with the pre-action protocol specified by the Scottish Ministers in regulations.]

(5) Part III of Schedule 5 to this Act shall have effect for supplementing Ground 9 in that Schedule and Part IV of that Schedule shall have effect in relation to notices given as mentioned in Grounds 1 to 5 of that Schedule.

(6) The **[F12]** First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless—

(a) the ground for possession is Ground 2 **[F13]**... in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9 **[F14]**... Ground 10 **[F15]**, Ground 15 or Ground 17; and

(b) the terms of the tenancy make provision for it to be brought to an end on the ground in question.

[F16] (6A) Nothing in subsection (6) above affects the **[F17]** First-tier Tribunal's power to make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, where the ground for possession is Ground 15 in Part II of Schedule 5 to this Act.]

(7) Subject to the preceding provisions of this section, the **[F18]** First-tier Tribunal may make an order for possession of a house on grounds relating to a contractual tenancy which has been terminated; and where an order is made in such circumstances, any statutory assured tenancy which has arisen on that termination shall, without any notice, end on the day on which the order takes effect.

[F19] (8) In **[F20]** subsection (4A) above—

(a) “relevant housing benefit” means—

(i) any rent allowance or rent rebate to which the tenant was entitled in respect of the rent under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971); or

(ii) any payment on account of any such entitlement awarded under Regulation 91 of those Regulations;

[F21] (aa) “relevant universal credit” means universal credit to which the tenant was entitled which includes an amount under section 11 of the Welfare Reform Act 2012 in respect of the rent;]

(b) references to delay or failure in the payment of relevant housing benefit **[F22]** or relevant universal credit do not include such delay or failure so far as referable to any act or omission of the tenant.]

[F23] (9) Regulations under subsection (4A)(b) may make provision about—

(a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),

(b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.

(10) Regulations under subsection (4A)(b) are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).

10. The tenancy agreement provided with this application does not narrate the terms of grounds 11, 12 13 and 15 as required by section 18(6)(b) above. Clause 1 of the tenancy agreement states:

This Agreement is intended to create a short assured tenancy as defined in Section 32 of the Housing (Scotland) Act 1988 and the Tenant acknowledges that he has received prior to the creation of the Tenancy notice to that effect in Form AT5 that the Tenancy may be brought to an end by an order for possession granted by the Sheriff on the application of the Landlord or of the heritable creditor of the Landlord in any of the circumstances set out in Grounds 2, 8 or 8 to 17 inclusive in Schedule 5 to the Housing (Scotland) Act 1988 provided always that the landlord has complied with Section 19 of that Act.

11. The tenancy agreement makes reference to the eviction grounds of schedule 5 but the eviction grounds are not narrated.

12. In the case of Royal Bank of Scotland-v- Boyle 1999 Hous LR 43 it was established that for an application based on s18(6) to succeed the essential ingredients of the ground relied upon must be referred to in the tenancy agreement. A brief reference to the grounds does not meet the threshold of essential ingredients.

13. Rule 8(1)(a) of the Rules allows an application to be **rejected** by the Chamber President if **“they consider that an application is vexatious or frivolous”**. “Frivolous” in the context of legal proceedings is defined by Lord Justice Bingham in R-v- North West Suffolk (Mildenhall)Magistrates Court (1998) Env.L.R.9. At page 16 he states:- “What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic”.

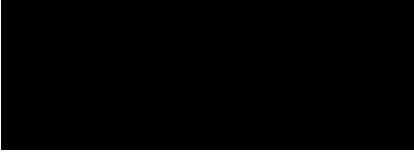
14. I consider that this application is hopeless and has no reasonable prospect of success as there is no valid notice to quit and the AT6 cannot be relied on, as the tenancy agreement does not narrate the eviction grounds. I note the applicant’s solicitor has now served a notice to quit which expires in October 2024 and the applicant may decide to make a new application upon the expiry of that notice.

NOTE: What you should do now.

If you accept this decision there is no need to reply.

If you disagree with this decision you should note the following:

An applicant aggrieved by this decision of the Chamber President or any legal member acting under delegated powers 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.



Lesley Anne Ward

Legal Member