



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 John Rodger and Mrs Emma Rodger in terms of rule 65 of the rules.

Respondent: Miss Clare Toner

At Glasgow on the 18 December 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 John Rodger and Mrs Emma Rodger, the owners of 51 Thornley Avenue Knightswood Glasgow G13 3BX ‘the property’, for recovery of possession of the property in terms of Rule 65.
2. The application was dated 17 October 2024 and received by the Tribunal on that date. .
3. The application was accompanied by the following:
 - Tenancy agreement
 - AT5
 - Notice to quit
 - Proof of posting and delivery of notice to quit.
 - Section 11 notice
 - Rent statement
 - AT6.
4. The inhouse convenor reviewed the application and the Tribunal wrote to the applicant on 18 November 2024 as follows:

(1) The lease agreement has an initial period of one year which expires on 16 April 2013. Thereafter the lease appears to continue on a year to year basis with an annual expiry or ish date of 16 April. The notice to quit served does not coincide with that date. Please provide representations as to how the notice to quit has validly ended the tenancy contract.

(2) In the absence of a valid notice to quit the contractual tenancy will continue. Section 18(6) of the Housing (Scotland) Act 1988 will apply. In that event, please provide written representations as to how the requirements of section 18(6) have been satisfied in relation to the tenancy terms.

5. The applicants responded on 21 November 2024. They accepted that the notice to quit should have been served to tie in with the ish date of 16 April. They asked the Tribunal to allow the application to proceed on the basis of section 18(6) of the Housing (Scotland) Act 1988. They explain that there are substantial rent arrears. They did not provide any submissions regarding the tenancy agreement providing for the tenancy being brought to an end on the grounds in question, namely ground 12.
6. There are a number of difficulties with this application which have led me to reject it.
7. Firstly, the notice to quit does not tie in with the ish date. The tenancy agreement is for the initial period of 12 months from 16 April 2012. There is no provision for month to month. The ish is therefore the 16 April. The applicant could still rely on the terms of s19 of the Housing (Scotland) Act 1988 ('the Act') and proceed on the basis of the AT6, but the tenancy agreement does not narrate the terms of schedule 5 of the Act.
8. 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 【F12First-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 【F17First-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 【F18First-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 【F20subsection (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 【F22or 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)).**]**

9. 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 the notice to quit provided is not valid, the contract has not come to an end and section 18(6) could apply. 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. The tenancy agreement provided with this application makes no reference to schedule 5 and no eviction grounds are narrated.

10. 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”.

11. I consider that this application is hopeless and has no reasonable prospect of success for the reasons given above. I understand that there are substantial rent arrears however it would be futile to accept the application, only to have it rejected at the case management discussion as this would cause further delay. It is open to the applicants to make a new application once they have served a valid notice to quit.

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.

L.Ward

Legal Member