



**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/24/4012**

**Re: Property at 39 Caledonian Road, Stevenston, KA20 3LG (“the Property”)**

**Parties:**

**Mr Michael Blaikie, 67 Clegg Gardens, Barassie, Troon, KA10 7GZ (“the Applicant”)**

**Mr Michael Mertins, 39 Caledonian Road, Stevenston, KA20 3LG (“the Respondent”)**

**Tribunal Members:**

**Gillian Buchanan (Legal Member) and Mike Scott (Ordinary Member)**

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

At the Case Management Discussion (“CMD”), which took place by telephone conference on 31 March 2025, the Applicant was not in attendance but was represented by Mr Andrew Stevenson of Waddell & Mackintosh Solicitors Limited. The Respondent was neither present nor represented.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) had been satisfied relative to the Respondent having received notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29.

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

**Background**

The Tribunal noted the following background:-

- i. The Applicant is the heritable proprietor of the Property.
- ii. The Applicant previously leased the Property to the Respondent in terms of a Tenancy Agreement that commenced on 10 January 2015.
- iii. The Tenancy Agreement was probably a Short Assured Tenancy Agreement. However, neither the Tenancy Agreement nor the associated Form AT5 could be

found, therefore this application proceeds on the basis that the Tenancy Agreement is Assured.

- iv. The rent payable is £400 per calendar month.
- v. On 22 May 2024, the Applicant's agent served on the Respondent by Sheriff Officers a Notice to Quit and a Notice under Section 18 of the Housing (Scotland) Act 1988 requiring the Respondent remove from the Property by 22 July 2024 on the basis of Grounds 1, 11, 12, 13 and 14 of Schedule 5 of the 1988 Act. Rent arrears stated to be due were £9,520.
- vi. The Applicant's agent issued a pre-action protocol letter on 11 March 2024.
- vii. The Applicant's agent served on North Ayrshire Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

### **The CMD**

At the CMD Mr Stevenson made the following oral representations:-

- i. The Applicant is not insisting on Ground 1 of Schedule 5 of the 1988 Act. The circumstances of the Applicant have moved on since the Application was raised.
- ii. The current rent arrears due by the Respondent total £13,520 with no payment having been made since February 2024.
- iii. The Respondent is understood to have abandoned the Property and is now living with his partner. However, he has not confirmed that he is not living there and has not returned the keys.
- iv. With regard to Ground 13 Mr Stevenson accepted that in the absence of the Tenancy Agreement he could not point to an express obligation on the Respondent in terms of the Agreement which had been broken or not performed. He speculated that access to the Property for gas safety inspections might be implied or that there might be some other legislative provision that applied. He could not, however, address the Tribunal in detail on that.
- v. With regard to Ground 14, Mr Stevenson relied upon the photographs lodged with the application which were taken by the Applicant around a year ago. He accepted that whilst the photos show disarray it could not be said that they illustrated the condition of the Property to have deteriorated.
- vi. The Applicant seeks an eviction order.

### **Findings in Fact**

- i. The Applicant is the heritable proprietor of the Property.
- ii. The Applicant previously leased the Property to the Respondent in terms of a Tenancy Agreement that commenced on 10 January 2015.
- iii. For the purposes of this application the Tenancy Agreement is an Assured Tenancy Agreement.
- iv. The rent payable is £400 per calendar month.
- v. On 22 May 2024, the Applicant's agent served on the Respondent by Sheriff Officers a Notice to Quit and a Notice under Section 18 of the Housing (Scotland) Act 1988 requiring the Respondent remove from the Property by 22 July 2024 on the basis of Grounds 1, 11, 12, 13 and 14 of Schedule 5 of the 1988 Act. Rent arrears stated to be due were £9,520.
- vi. The Applicant's agent issued a pre-action protocol letter on 11 March 2024.
- vii. The Applicant's agent served on North Ayrshire Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- viii. The current rent arrears due by the Respondent total £13,520 with no payment having been made since February 2024.

## Reasons for Decision

The Respondent did not submit any representations to the Tribunal and did not attend the CMD. The factual background narrated by the Applicant within the application papers and orally on his behalf at the CMD was not challenged and was accepted by the Tribunal.

The application proceeds upon Section 18 of the 1988 Act and Grounds 1, 11, 12, 13 and 14 of Schedule 5 thereof.

Mr Stevenson indicated that he was not insisting on Ground 1.

He accepted that in the absence of the Tenancy Agreement he could not identify an express obligation on the Respondent in terms thereof which the Respondent had broken or not performed. Whilst passing reference was made to a possible implied term being incumbent on the Respondent relative to gas safety inspections and a possible legislative basis therefore no detailed submissions were made and the Tribunal could not consider granting an order on the basis of Ground 13.

Mr Stevenson also acknowledged that in relation to Ground 14, whilst the photographs of the Property showed disarray, it could not be said that the condition of the Property itself had deteriorated and the Tribunal had no evidence to that effect. The Tribunal could not consider granting an order on that basis.

Section 18 states:-

*"18.— Orders for possession.*

*(1) The First-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.*

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

*(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 First-tier Tribunal shall have regard, in particular, to -*

*(a) the extent to which any delay or failure to pay rent taken into account by the Tribunal in determining that the Ground is established is or was a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit, 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 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 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9, Ground 10, 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.*

*(6A) Nothing in subsection (6) above affects the 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 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.*

*(8) In 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;*

*(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 or relevant universal credit do not include such delay or failure so far as referable to any act or omission of the tenant.*

*(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))."*

Schedule 5 Grounds 11 states:-

*"Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due."*

Schedule 5 Ground 12 states:-

*"Some rent lawfully due from the tenant—*

*(a) is unpaid on the date on which the proceedings for possession are begun; and*

*(b) except where subsection (1)(b) of section 19 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings."*

The Respondent did not challenge the tenancy to be anything other than an Assured Tenancy under the 1988 Act as stated by the Applicant.

The Respondent did not challenge the Notice to Quit served by Sheriff Officers on 22 May 2024.

The Respondent did not challenge the validity of the Form AT6 Notice served by the Applicant on 22 May 2024.

The Respondent is in substantial rent arrears with his last payment being in February 2024. The Respondent has persistently delayed in paying rent. The Applicant has complied with the Scottish Government's pre action protocol requirements.

In all the circumstances the Tribunal determined it is reasonable to grant an eviction order.

### **Decision**

The Tribunal grants an eviction order against the Respondent in favour of the Applicant.

### **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.**

# G Buchanan

**Legal Member/Chair**

**Date: 31 March 2025**