



**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/24/2760

Re: Property at 19 Craigflower View, Torryburn, Fife, KY12 8HG ("the Property")

Parties:

Mr Enda Kelly, 22 Chelsea Gardens, Ealing, London, W13 0DS ("the Applicant")

**Ms Cindi Deffley, 19 Craigflower View, Torryburn, Fife, KY12 8HG ("the
Respondent")**

Tribunal Members:

Gillian Buchanan (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

At the Case Management Discussion ("CMD"), which took place by telephone conference on 24 March 2025, the Applicant was present. 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 leased the Property to the Respondent in terms of a Short Assured Tenancy ("the SAT") that commenced on 1 September 2015.
- iii. The initial term of the SAT was for the period to 31 August 2016.
- iv. The SAT continued thereafter on a month to month basis.
- v. On 15 March 2024, the Applicant served on the Respondent by recorded delivery post a Notice to Quit ending the contractual basis of the Tenancy as at 31 May 2024.

- vi. On 15 March 2024 the Applicant also served on the Respondent by recorded delivery post a Form AT6 Notice of Intention to Raise Proceedings for Possession of the Property under section 19 of the Housing (Scotland) Act 1988 ("the 1988 Act") and Ground 1 of Schedule 5 thereto.
- vii. The Applicant has served on Fife Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

This application is for an eviction order against the Respondent in favour of the Applicant.

The CMD

At the CMD the Applicant made the following representations:-

- i. The Applicant has been told that the Respondent is hardly ever at the Property. This information has come from neighbours but the Applicant proceeds on the basis that the Respondent does live there.
- ii. Indeed the Respondent reported with an issue with the back door in February 2025 by text message and the Applicant called her back to resolve the position.
- iii. When the SAT was originally put in place the Respondent moved into the Property with her partner and two children. She has since had a third child.
- iv. The Applicant lived in the Property from 2004 until he moved to live with his parents in order to care for his mother until she died and thereafter his father. His father passed away in October 2022.
- v. The Applicant's parents' home was sold to pay for their care and following their deaths the Applicant has lived in rented accommodation in various locations.
- vi. He said it took him a while to get himself together following the death of his parents and has now decided that he would like to live in his own home and to be able to go out and enjoy the garden etc.
- vii. When the Notice to Quit and Form AT6 were served in March 2024 they were signed for by a neighbour, Elizabeth Russell.
- viii. With regard to the error in the date before which proceedings will not be raised in the Form AT6, being 31 May 2025, that date ought to have read 2024 and the Applicant only became aware of the error when pointed out to him during the Tribunal process.
- ix. The Applicant did not serve any further Notice on the Respondent with the date corrected.
- x. The Applicant stated that the Respondent was aware of the correct date of 31 May 2024 as they talked on the phone a lot. The Applicant said that in February 2024 he told the Respondent that he wanted to move back into the Property. He called and explained the position by telephone and acknowledged that the Respondent would need time to find somewhere else to stay. The Respondent said she would get back to the Applicant regarding a move out date. The Respondent then called the Applicant and said she needed the legal documentation and he explained that he would need to serve Notices with a minimum notice period of two months but was happy to give a longer notice period. The Respondent wanted to begin the process straight away and the Tribunal noted the text messages exchanged between the Applicant and the Respondent in March 2024.
- xi. The Respondent never pointed out to the Applicant the erroneous date in the Form AT6.
- xii. The Applicant stated that the Respondent was previously a neighbour when the Applicant stayed in the Property and therefore they knew each other prior to the SAT being entered into. The Respondent previously rented a house a couple of

- doors down from the Property and entered into the SAT when the owners of her previous property were selling and she needed somewhere to stay quickly.
- xiii. The Respondent has told the Applicant that she has been looking for somewhere else to stay but rent levels in the private sector are hard to reach.
 - xiv. The Applicant last spoke to the Respondent in around February 2025 when she texted about getting the back door of the Property replaced. She stated that she is relying on the local authority to provide accommodation for her.
 - xv. The Applicant does not have the SAT as originally signed. The Applicant has moved house several times in the interim.
 - xvi. The Applicant cannot recall serving the Notice required in terms of Ground 1 of Schedule 5 of the 1988 Act but he cannot say for sure that he did not issue such a Notice. He said that he had certainly made the Respondent aware that he might need the Property back at some point.
 - xvii. He is moving back to the Property alone.
 - xviii. The Applicant stated that he is aware that the Respondent is to get housing from Fife Council but appreciates the housing emergency in play. He does not want her to have nowhere to go. However the Respondent wants the situation resolved as soon as possible and in speaking to the Housing Officer of Fife Council an eviction order is needed.

The Tribunal adjourned to consider the position.

Findings in Fact

The Tribunal made the following findings in fact:-

- i. The Applicant is the heritable proprietor of the Property.
- ii. The Applicant leased the Property to the Respondent in terms of the SAT that commenced on 1 September 2015.
- iii. The initial term of the SAT was for the period to 31 August 2016.
- iv. The SAT continued thereafter on a month to month basis.
- v. The Respondent was previously a neighbour when the Applicant stayed in the Property and therefore they knew each other prior to the SAT being entered into.
- vi. The Respondent previously rented a house a couple of doors down from the Property and entered into the SAT when the owners of her previous property were selling and she needed somewhere to stay quickly.
- vii. In February 2024 the Applicant told the Respondent that he wanted to move back into the Property. He called and explained the position by telephone and acknowledged that the Respondent would need time to find somewhere else to stay. The Respondent asked the Applicant to serve the required Notices to terminate the SAT.
- viii. On 15 March 2024, the Applicant served on the Respondent by recorded delivery post a Notice to Quit ending the contractual basis of the Tenancy as at 31 May 2024.
- ix. On 15 March 2024 the Applicant also served on the Respondent by recorded delivery post a Form AT6 Notice of Intention to Raise Proceedings for Possession of the Property under section 19 of the Housing (Scotland) Act 1988 ("the 1988 Act") and Ground 1 of Schedule 5 thereto.
- x. In part 4 of the Form AT6 the date prior to which proceedings could not be raised was erroneously stated to be 31 May 2025, due to a typographical error.
- xi. The Respondent never pointed out to the Applicant the erroneous date in the Form AT6.
- xii. The Respondent was aware that the correct date was intended to be 31 May 2024.

- xix. Prior to the SAT the Applicant lived in the Property from 2004 until he moved to live with his parents in order to care for his parents until their deaths.
- xx. Subsequently the Applicant has lived in rented accommodation in various locations and would now like to return to live in his own home.
- xxi. The Applicant last spoke to the Respondent in around February 2025 when she texted about getting the back door of the Property replaced. She stated that she is relying on the local authority to provide accommodation for her.
- xiii. The Applicant has served on Fife Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

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 at the CMD was not challenged and was accepted by the Tribunal. The Applicant spoke credibly and reliably.

Legislative Framework

The application proceeds upon Section 18 of the 1988 Act and Ground 1 of Schedule 5 thereof.

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, Ground 1 states:-

"Not later than the beginning of the tenancy the landlord (or, where there are joint landlords, any of them) gave notice in writing to the tenant that possession might be recovered on this Ground or the First-tier Tribunal is of the opinion that it is reasonable to dispense with the requirement of notice and (in either case)—

(a) at any time before the beginning of the tenancy, the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them occupied the house as his only or principal home; or

(b) the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them requires the house as his or his spouse's or civil partner's only or principal home, and neither the landlord (or, in the case of joint landlords, any one of them) nor any other person who, as landlord, derived title from the landlord who gave the notice mentioned above acquired the landlord's interest in the tenancy for value."

Section 19 Notice

On 15 March 2024 the Applicant served on the Respondent by recorded delivery post a Notice to Quit and a Form AT6 Notice of Intention to Raise Proceedings for Possession of the Property under section 18 of the 1988 Act and Ground 1 of Schedule 5 thereto. The Notice to Quit referred to the date by which the Respondent should vacate the Property as 31 May 2024. The Form AT6 erroneously referred to the equivalent date in Part 4 as 31 May 2025. It is clear that the latter date is erroneous and has been caused by a typographical error in the last digit. Whilst the Applicant was unaware of the error until after these proceedings were raised the Respondent does not seek to rely upon the erroneous date and the Applicant's description of the chronology of events leading up to the Notices being issued coupled with the terms of the text messages exchanged between the parties in March 2024 make it clear that the truly intended date was 31 May 2024. The Tribunal therefore treat the date within Part 4 of the Form AT6 as being 31 May 2024.

Ground 1 Notice

The Tribunal did not have sight of any Notice issued by the Applicant to the Respondent prior to the beginning of the SAT all in terms of Schedule 5, Ground 1. The Applicant could not be sure if such a Notice was issued. The Tribunal took into account that at Clause 20.4 of the SAT Grounds 1 to 17 of Schedule 5 of the 1988 Act are summarised and the summary narrative relative to Ground 1 makes it clear that the Applicant may require the Property back for use as his principal home. The Tribunal therefore considered it reasonable to dispense with the requirement for a Notice under Ground 1.

Reasonableness

The Tribunal considered it reasonable to grant an eviction order. The Applicant previously lived in the Property for a number of years and left the Property to care for his parents. Following their deaths he has lived in rented accommodation. It is reasonable that he now wishes to move back into the Property. The Respondent does not oppose the grant of an eviction order. The Respondent is awaiting an offer of accommodation from Fife Council. The grant of an eviction order will accelerate that process to her benefit.

Decision

The Tribunal granted 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.

Gillian Buchanan

Legal Member/Chair

24 March 2025
Date