



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 (“the 1988 Act”) and Rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/EV/24/2584

Re: Property at Burnhead Farmhouse, Killochan, Girvan, KA26 9QE (the Property)

Parties:

Mr Alex Paton, Penkill Farm, Girvan, KA26 9TQ (the Applicant)

Harper Macleod LLP (the Applicant’s Representative)

Mr Douglas Scott, Burnhead Farmhouse, Killochan, Girvan, KA26 9QE (“the Respondent”)

**Ayr Housing Aid Centre
(the Respondent’s Representative)**

Tribunal Members:

**Ms. Susanne L. M. Tanner K.C. (Legal Member)
Ms. Ann Moore (Ordinary Member)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) was satisfied that Grounds 13, 14 and 16 in Part II of Schedule 5 to the 1988 Act were established by the Applicant; and that it was reasonable to make an order for possession and to defer the date for enforcement of the order until 16 June 2025.

The decision of the tribunal was unanimous.

Reasons

Procedural Background

1. The Applicant's Representative made an application to the tribunal on [] in terms of Section 18 of the Housing (Scotland) Act 1988 (the 1988 Act) and Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (the 2017 Rules).
2. The Applicant seeks an order for possession of the Property in terms of Section 18 of the 1988 Act under Grounds 8 of Schedule 5 to the 1988 Act.
3. The Applicant's Representative lodged with the Application:
 - 3.1. a copy of a Short Assured Tenancy agreement between the parties for the Property dated 1 June 2012;
 - 3.2. Copy Notice to Quit dated 26 April 2024;
 - 3.3. Copy AT6 dated 26 April 2024;
 - 3.4. Certificate of posting and receipt dated 26 and 27 April 2024, respectively;
 - 3.5. Section 11 Notice to East Ayrshire Council and email service dated 6 June 2024
 - 3.6. Copy photographs of the Property and surrounding area.
4. The Application was accepted for determination and a Case Management Discussion (CMD) was fixed and took place on 11 December 2024. The issues to be resolved were identified and a videoconference hearing was fixed for 28 April 2025 at 1000h.
5. The Applicant's Representative lodged submissions, a list of witnesses and a second inventory of productions on 16 April 2025.
6. On 28 April 2025, the Respondent's Representative lodged a soul and conscience certificate from the Respondent's General Practitioner, stating that he was unable to attend the hearing on 28 April 2025. The Applicant's Representative requested that his attendance be excused.

Hearing: 28 April 2025, 1000h, videoconference

7. Mr Nicolson from the Applicant's Representative attended on behalf of the Applicant. The Applicant was available to give evidence and to give instructions to his representative.
8. Mr Anderson from the Respondent's Representative attended on behalf of the Respondent.
9. Mr Anderson stated that the Application for possession is no longer opposed but that a deferred date for enforcement of the eviction order is being sought. He stated that the Respondent is not in good health. He now has the assistance of a social worker. The Respondent has now been placed number on the local authority's housing list. The Respondent realises that he has to move out of the Property. He cannot manage the Property by himself any longer. He has begun moving vehicles from the Property. The Respondent understands that if a permanent property cannot be found he may have to move into temporary accommodation.
10. Mr Anderson stated that he has been told by the Respondent that the Property has recently failed a tolerable standard check which may relate to dampness. Mr Anderson has not seen the report from Environmental Health. The Respondent has told Mr Anderson that he is withholding rent. Mr Anderson understands that rent has not been paid in March or April 2025. Mr Anderson has given advice to the Respondent about retaining the withheld rent in a separate account.
11. The tribunal adjourned to allow Mr Nicolson to obtain instructions from his client.
12. Mr Nicolson confirmed his instructions that a deferral of the order is not opposed in principle but invited the tribunal to restrict this to two weeks in addition to the statutory appeal period, given that rent is not being paid. The Applicant has not received a copy of the Environmental Health Report or been made aware that there are repairs issues or that the Respondent is withholding rent.
13. Mr Anderson confirmed that the Respondent is aware that civil proceedings could be raised against him and stated that he would repeat his advice to his client about retaining any withheld rent in a separate account.
14. The tribunal makes the following findings-in-fact:
 - 14.1. The Applicant is the joint registered proprietor of the Property.
 - 14.2. There is an assured tenancy between the Applicant and the Respondent for the Property.
 - 14.3. An AT6 (Section 19 notice) was served on the Respondent.

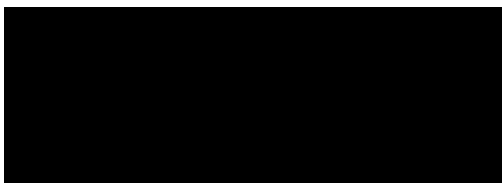
- 14.4. The AT6 notice included notice that the Applicant was intending to raise proceedings for possession of the Property on Grounds 13, 14, 15 and 16 of Schedule 5 to the Housing (Scotland) Act 1988 (“the 1988 Act”).
- 14.5. The Respondent does not oppose the application for possession but seeks an additional month to remove from the Property.
- 14.6. The Respondent has withheld rent in March and April 2025.
- 14.7. The Respondent suffers from a number of health conditions.
- 14.8. The Property is no longer suitable for the Respondent.
- 14.9. The Respondent has a social worker and has been placed number one on the local authority housing list.

Discussion

15. The tribunal adjourned to deliberate. The Application for possession is not opposed but the Respondent wishes the order to be deferred for an additional month beyond the statutory appeal period and the Applicant agrees to a short deferral but wishes the it to be restricted to an additional two weeks. The tribunal took into account both parties’ submissions, including the fact that the Respondent is high priority on the local authority’s housing list and the fact that the Respondent has started withholding rent, without having notified the same to the Applicant.
16. The tribunal decided that it was reasonable in the circumstances to make the order for possession in terms of Section 18(3) of the 1988 Act; and to defer the date for enforcement to 16 June 2025.

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.



28 April 2025

Legal Member/Chair