



**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/24/3763

Re: Property at 2 Oak Cottage, St. Ola, Kirkwall, KW15 1SU (“the Property”)

Parties:

Robert Ivor Edwin Parker, who has no current fixed address (“the Applicant”)

**Joseph Parker, Joshua Schofield, 2 Oak Cottage, St. Ola, Kirkwall, KW15 1SU
 (“the Respondents”)**

Tribunal Members:

Joel Conn (Legal Member) and Elaine Munroe (Ordinary Member)

Decision (in absence of the Respondents)

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

Background

1. This is an application by the Applicant for an order for possession in relation to an assured tenancy in terms of rule 65 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The tenancy in question was said to be an unwritten Assured Tenancy of the Property by Applicant to the Respondents commencing on 1 August 2016 and running until 31 July 2017, and continuing by tacit relocation since.
2. The application was dated 16 August 2024 and lodged with the Tribunal on that date. The application relied upon a Notice to Quit dated 14 March 2024, providing the Respondents with notice that the Applicant sought to terminate the Tenancy by 31 July 2024, and a notice in terms of section 19 (also known as an “AT6”) of the *Housing (Scotland) Act 1988* dated 14 March 2024. Evidence of service of both of the notices by Sheriff Officer on 14 March 2024 was included with the application.

3. The said AT6 relied upon ground 1 of Schedule 5 to the 1988 Act: that the Applicant wished to occupy the Property as his only or principal home. An affidavit accompanied the application papers setting out the matrimonial break-up that had resulted in the Applicant seeking a new home and the reasons why the Property was his only tenable option. (These details, and further details provided in submissions, are reviewed below.)
4. Evidence of a section 11 notice dated 16 August 2024 in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Orkney Islands Council was provided with the application.
5. There was no evidence of a prior notice in terms of ground 1 of Schedule 5. The Applicant's motion in regard to this is reviewed below.

Procedural history

6. Prior to the first case management discussion ("CMD") in the application there was a motion for postponement made by a solicitor acting for the Respondents. Substantial written submissions were received from solicitors acting for both parties. The submissions from both sides addressed disputes on the application. We declined to postpone, favouring a full consideration of matters at the CMD. The contents of these submissions are reviewed in detail below.
7. The matter first called for a CMD on 2 April 2025 at 14:00. The Applicant was represented by Alexandra Wooley, solicitor, BKF & Co. There was no appearance for the Respondents. Conscious of the very recent communications on the motion from the Respondents' solicitor (Michael Thompson of Thompson Family Law) attempts were made by the clerk to contact the firm but no one was reached.
8. Details of our full consideration of the procedural issues are within the Note of the CMD of 2 April 2025. We decided to adjourn the CMD to 29 April 2025 and issue a Notice of Direction, providing the Respondents' agent with a short period to confirm in writing that the application was still defended and, if so, written submissions on the defence. Further, to assist the Respondents in preparing any written submissions, a full review of the application papers and parties' submissions was undertaken at the CMD of 2 April 2025 and documented in the Note of the CMD.
9. In terms of the said Notice of Direction, the Respondents were provided until close of business on 23 April 2025 to confirm that the application was still opposed and, if so, lodge written submissions. No further communication was, however, received from the Respondents (or on their behalf) prior to the commencement of the adjourned CMD of 29 April 2025.

The Hearing

10. On 29 April 2025 at 14:00, at a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting remotely by telephone conference call, we were addressed again by Ms Wooley for the Applicant and, again, there was no appearance for the Respondents.
11. The Applicant’s agent could provide no details for the Respondents’ non-appearance but understood that Thompson Family Law had recently appeared in the divorce proceedings between the Applicant and the Respondents’ mother. Thus she believed that the firm remained acting in matters relating to the break-up even if no appearance was being made for the Respondents in this application. In consideration of this information, and the lack of any response further to the Notice of Direction, we were thus satisfied that there was no appearance by the Respondents and, in the circumstances, decided to consider the application in full at the CMD in the absence of the Respondents.
12. In regard to the merit of the application, the Applicant’s agent confirmed that the Applicant still sought an order for eviction. She confirmed that a proof in the divorce action between the Applicant and his estranged wife (in which the Property was one of the issues in dispute, as detailed below) commenced on 7 and 8 April 2025 but did not conclude and was continued to 30 June 2025. The divorce action had thus not, so far, resulted in any change in the parties’ position and the Applicant’s agent confirmed that she continued to rely on the position detailed in the application and its papers, the written submissions on the Respondents’ motion to postpone, and the oral submissions provided at the CMD of 5 April 2025. These are detailed in the Note to the CMD of 5 April 2025 but we repeat the relevant sections here for completeness:
 - a. The Respondents are respectively the son and step-son of the Applicant. They are both the children of the Applicant’s estranged wife. There is a current divorce action between the Applicant and his estranged wife.
 - b. The Property is:
 - i. a two bedroom semi-detached property; and
 - ii. not specially adapted for the Respondents.
 - c. The Applicant knew of no dispute by the Respondents to the lease terms as relied upon:
 - i. That the Tenancy was an unwritten assured tenancy commencing on 1 August 2016 and running until 31 July 2017.
 - ii. That rent was for £515 per month, and was unchanged since the commencement of the Tenancy.
 - iii. An ish date of the lease had been 31 July 2024 and so the Notice to Quit was issued referring to this ish date.
 - iv. That there had been no prior notification under the Tenancy by the Applicant to the Respondents that he may wish to recover possession so as to occupy the Property (in terms of ground 1 of Schedule 5 of the 1988 Act).

- d. As there was no prior notification in respect of repossession under ground 1, the Applicant sought the Tribunal to dispense with that requirement and argued that it was reasonable to do so on the following grounds:
 - i. No advice had been sought when the Tenancy commenced, as there had been a degree of informality (as the Respondents were family members). The Applicant had been unaware of the requirement to give prior notice in respect of ground 1.
 - ii. The Applicant is eager to settle down in Orkney, following the break-up of his marriage, and has found no other options for suitable and affordable accommodation.
- e. The Applicant had purchased the Property with the intention of letting it to the Respondents. The Applicant has never lived in the Property.
- f. The Respondents are in their late 20s.
- g. The Applicant was born in 1961 and is currently retired.
- h. The Applicant sold his previous matrimonial home ("Queena"), jointly owned with his estranged wife, during the course of the divorce action. An order in respect of that property was sought in the divorce action and, in consideration of the prospects for that order in the divorce action, the Applicant decided that it was appropriate to agree with his estranged wife to have Queena sold and the proceeds divided by arrangement.
- i. Though the Respondents' agent referred within the motion to postpone to the Applicant having made himself "intentionally homeless" due to the agreement to sell Queena this was disputed by the Applicant. Further, the Applicant's agent was unaware of any legal significance of this phrase in relation to ground 1 of the 1988 Act.
- j. Since the sale of Queena, the Applicant has had no fixed abode, and is reliant on friends, and occasionally his car, for his accommodation. He has sought other accommodation but cannot find anything suitable that is both in or near Kirkwall and that will allow him to keep his dog with him. He has been told by the local authority that, because he owns the Property, he will not be considered for social housing. He wishes to remain in Kirkwall because of his network of friends, his church, and a counsellor he attends.
- k. The Respondents' mother is believed still to live in Kirkwall but, other than that, the Applicant knew of no other reason why the Property was especially suitable for the Respondents' purposes.
- l. The Applicant's long-term intention is to remain at the Property. Though there was a reference in the application to his intention to remain there for "at least three months" this was an understatement of his intentions.
- m. The Property is mentioned in the divorce action, and the Applicant's estranged wife does seek transfer of title of the Property to her. The Applicant opposes this as:

- i. He disputes the Property is matrimonial property, as it was purchased from funds from the Applicant's brother.
 - ii. The Applicant wishes to live at the Property.

Further, the Applicant opposed any delay in the application to await the decision in the divorce action, as it would likely be several more months before a decision would be reached in the divorce.
 - n. Though the Respondents' agent referred - within the submissions on the motion to postpone - to the Respondents' mental health issues, the Applicant knew of no mental health issues suffered by the Respondents up to the point he last had contact with them, which was mid-2023.
 - o. The Respondents paid rent to the Applicant until mid-2023 when contact broke down between them.
13. No order for expenses was sought.

Findings in Fact

- 14. The parties agreed an unwritten lease, being an assured tenancy, commencing on 1 August 2016 and running until 31 July 2017 ("the Tenancy").
- 15. Since 1 August 2017, the Tenancy has continued by tacit relocation on an annual basis.
- 16. Under the Tenancy, the Respondents were to make payment of £515 per month in rent in advance to the Applicant on the 1st of each month.
- 17. On 14 March 2024, the Applicants' agent drafted a Notice to Quit in correct form addressed to the Respondents, giving the Respondents notice that the Applicant wished them to quit the Property by 31 July 2024.
- 18. 31 July 2024 is an ish date of the Tenancy.
- 19. On 14 March 2024, the Applicant's agent drafted an AT6 form in correct form addressed to the Respondents, giving the Respondents notice in terms of section 19 of the 1988 Act of an intention to raise proceedings for possession in terms of Ground 1 of Schedule 5 to the 1988 Act. The AT6 gave the Respondents notice that proceedings would not be raised before 31 July 2024.
- 20. On 14 March 2024, a Sheriff Officer acting for the Applicant competently served both notices upon the Respondents. The Respondents were thus provided with sufficient notice of the Applicant's intention that the Tenancy was to terminate on 31 July 2024 and that the Applicant sought to evict under the ground set out in the AT6.
- 21. On 16 August 2024, the notice period under the Notice to Quit and AT6 having expired, the Applicant raised proceedings for an order for possession with the Tribunal, under rule 65, relying on the Property not yet having been vacated and

the Applicant still seeking to occupy it as his only or principal home; and that it was reasonable to make the order.

22. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon Orkney Islands Council on 16 August 2024 on the Applicant's behalf.
23. On 20 February 2024, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondents, providing the Respondents with sufficient notice of the initial CMD for the application of 2 April 2025. The Respondents instructed a solicitor to seek a postponement of that CMD, which motion was refused.
24. The Respondents' last payment towards rent was in or about Summer 2023.
25. The Respondents are respectively the son and step-son of the Applicant. They are both the children of the Applicant's estranged wife.
26. The Property is a two bedroom semi-detached property; and not specially adapted for the Respondents.
27. Prior to the commencement of the Tenancy, there was no prior notification by the Applicant to the Respondents that he may wish to recover possession so as to occupy the Property (in terms of ground 1 of Schedule 5 of the 1988 Act).
28. No advice was sought by the Applicant prior to the commencement of the Tenancy and the Applicant had been unaware at that time of the requirement to give prior notice in respect of ground 1 should he wish subsequently to rely on that ground.
29. The Applicant wishes to remain and settle in Orkney following the break-up of his marriage. Specifically, the Applicant wishes to remain in Kirkwall because of his network of friends, his church, and a counsellor he attends.
30. The Applicant purchased the Property with the intention of letting it to the Respondents.
31. The Applicant has never lived in the Property.
32. The Respondents are in their late 20s.
33. The Applicant was born in 1961 and is currently retired.
34. The Applicant sold his previous matrimonial home ("Queena"), jointly owned with his estranged wife, during the course of the divorce action as a negotiated part-settlement of matters between himself and his wife.
35. Since the sale of Queena, the Applicant has had no fixed abode, and is reliant on friends, and occasionally his car, for his accommodation.

36. The Applicant has sought other accommodation but has found no suitable and affordable accommodation that is both in or near Kirkwall and that will allow him to keep his dog with him. He has been told by the local authority that, because he owns the Property, he will not be considered for social housing.
37. The Respondents' mother is believed still to live in Kirkwall but otherwise the Property is not suitable for the Respondents' purposes.
38. The Applicant's long-term intention is to reside at the Property.

Reasons for Decision

39. The relevant statutory provisions in the 1988 Act relating to this application are as follows:

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.*

...

19.— Notice of proceedings for possession.

- (1) *The First-tier Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless—*
 - (a) *the landlord ... has served on the tenant a notice in accordance with this section; or*
 - (b) *the Tribunal considers it reasonable to dispense with the requirement of such a notice.*
- (2) *The First-tier Tribunal shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground and particulars of it are specified in the notice under this section; but the grounds specified in such a notice may be altered or added to with the leave of the Tribunal.*
- (3) *A notice under this section is one in the prescribed form informing the tenant that—*
 - (a) *the landlord intends to raise proceedings for possession of the house on one or more of the grounds specified in the notice; and*
 - (b) *those proceedings will not be raised earlier than the expiry of the period of two weeks or two months (whichever is appropriate under subsection (4) below) from the date of service of the notice.*
- (4) *The minimum period to be specified in a notice as mentioned in subsection (3)(b) above is—*

- (a) *two months if the notice specifies any of Grounds 1, 2, 5, 6, 7, 9 and 17 in Schedule 5 to this Act (whether with or without other grounds); and*
- (b) *in any other case, two weeks.*

...

- (7) *A notice under this section shall cease to have effect 6 months after the date on or after which the proceedings for possession to which it relates could have been raised.*

Schedule 5: Ground 1

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 ... at least one of them occupied the house as his only or principal home; or*
- (b) *the landlord who is seeking possession ... requires the house as his or his spouse's or civil partner's only or principal home, and neither the landlord ... 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.*

- 40. The application is in terms of rule 65, being an order for possession in relation to assured tenancies. We were satisfied, on the basis of the application and supporting papers, and the oral submissions provided at the CMDs, that a valid AT6 had been issued on the Respondents; and that the appropriate notice period of the AT6 had expired without vacant possession being provided.
- 41. In regard to the lack of pre-tenancy notification of the intention to rely upon ground 1, we required to decide whether it was reasonable to dispense with the lack of notice. No issue was made of the lack of notice in the submissions provided by the Respondents' agent in the motion to postpone and, as we say, no continued intention to defend on any ground was intimated. In all the circumstances, and particularly the Applicant's current lack of a permanent residence, we are satisfied to dispense with the requirement of the notice and consider the application.
- 42. This requires us to consider whether we have any doubt as to whether ground 1 has been made out and, if not, whether it is reasonable to evict. In the absence of any continued intention to defend by the Respondents, there is no dispute that the Applicant seeks to occupy the Property as his only or principal home and we see no reason for holding that ground 1 has not been satisfied on the basis of the information provided.
- 43. In regard to reasonableness, we find the Applicant's arguments compelling in themselves. The lack of payment of rent adds to the reasonableness of eviction. When the Respondents did advance a defence, it was based on the circumstances of the Applicant's homelessness, that the Property may be

transferred as part of the divorce, and that the Respondents had mental health issues (the specifics of which were not provided). As we say, we take that none of these disputes are still being advanced as no response was made to the Notice of Directions. For completeness however, from what information is available to us, we are satisfied to accept the Applicant's response to the first two of these: that he is homeless due to a reasonable decision made as part of his divorce, and that the divorce action is far from being resolved and matters should not be delayed to await its conclusion. In regard to the third, there is a lack of information as to the alleged health issues of the Respondents and we regard the Applicant's need for housing makes it reasonable to evict even if the Respondents may have health issues.

44. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. We were thus satisfied to grant an order for possession relative to rule 65.

Decision

45. In all the circumstances, we make the decision to grant an order against the Respondents for possession of the Property under section 18 of the Housing (Scotland) Act 1988.

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.

Joel Conn

19 May 2025

Legal Member/Chair

Date