

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 18 Housing (Scotland) Act
1988 (“the 1988 Act”)**

Chamber Ref: FTS/HPC/EV/24/0703

**Property at 130/11 Gylemuir Road, Gylemuir Road, Corstorphine, Edinburgh
EH12 7DL (“the Property”)**

Parties:

**Hawksdale Ltd, Cronk Beg, Ballagawne Road, Colby, IM9 4AZ, Isle of Man (“the
Applicant”)**

**Mr John 'Gracie' Crawford, 130/11 Gylemuir Road, Gylemuir Road,
Corstorphine, Edinburgh EH12 7DL (“the Respondent”)**

Tribunal Members:

Josephine Bonnar (Legal Member) and Ahsan Khan (Ordinary Member)

Decision - in absence of the Respondent

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for possession should be granted against
the Respondent in favour of the Applicant.**

Background

1. The Applicant seeks an order for possession in terms of Section 18 of the 1988 Act. A tenancy agreement, AT6 notice, Section 11 Notice, rent statement, and correspondence with the Respondent were lodged with the application. The AT6 and application form specify grounds 11, 12, 13, 14 and 15 of schedule 5 to the 1988 Act. A related application for a payment order was also submitted.
2. A copy of the application was served on the Respondent, and parties were notified that a case management discussion (“CMD”) would take place on 24 April 2025 at 10am by telephone conference call and that they were required to participate.

3. The CMD took place on 24 April 2025. The Applicant was represented by Ms McGowan and Mr Boisseau ("the representatives"). The Respondent did not participate and was not represented.

Summary of discussion at the Case Management Discussion

4. The Representatives told the Tribunal that the Applicant had previously obtained a payment order for £16,750. Although Sheriff Officers have been instructed on two occasions, no sums have been recovered from the Respondent. They now seek a payment order for the arrears which have accrued since the order was granted, the sum of £192.60. This sum has increased over the last 2 months since the rent now being paid directly by the Council does not cover the increased rent charge, although random additional payments are sometimes received, with no explanation. The Respondent has made no additional payments.
5. The Tribunal was told that the Applicant seeks an order for possession on grounds 11 and 12, in relation to the substantial arrears of rent. In addition, the Applicant also relies on grounds 13, 14 and 15. In relation to ground 13, the Respondent has failed for many years to allow access to the letting agent for inspection. It is no longer possible to communicate with him by email as the emails bounce back. The agents have been at his door on many occasions, but he refuses to answer. He does not respond to notes put through his door. He is also difficult about allowing contractors to do work. The property recently required electrical work. He eventually allowed the contractor access to do this. As a result, they did not make a right of entry application to the Tribunal. However, they have still not been able to inspect.
6. The Applicant also relies on ground 14, on the basis that the Respondent has on many occasions vandalised the common areas of the property by writing offensive comments about neighbours. In response to questions for the Tribunal, the representatives confirmed that they are unable to provide evidence of this. There are no cameras in the common areas so there is no evidence that the Respondent is the one responsible for the vandalism. Private cameras have often been damaged. However, the Applicant is certain that the Respondent has caused the damage.
7. The Tribunal noted that the Applicant has provided evidence in support of ground 15. This includes a Police Disclosure which confirms that the Respondent was convicted on 31 October 2024 of a contravention of Section 3(1)(b) of the Hate Crime and Public Order (Scotland) Act 2021. The date of the offence is 29 October 2024. There are also emails from a resident with details of incidents of racial abuse. The representatives said that the Respondent's behaviour has been an issue for several years. However, other residents were unwilling to give witness statements for fear of repercussions. The resident who sent the emails and whose child was the victim of the offence has now moved away because of the Respondent's behaviour. This has happened on many occasions before, with tenants being unwilling to remain for any more than a few months. As a result of the residents' unwillingness, it has

taken some time to get the required evidence together to make an application on ground 15. A previous application was made in terms of Section 33 of the 1988 Act, which was unsuccessful.

8. The representatives advised the Tribunal that they have little information about the Respondent as he does not engage with them. He is about 48 or 49 and lives at the property alone. As his rent is paid by benefits, he is probably not working. The Applicant owns 63 out of 66 flats in the development. There have been serious financial consequences for the Applicant as a result of the Respondent's behaviour with the flats being difficult to let and tenants leaving after a short period.

Findings in Fact

9. The Applicant is the owner and landlord of the property.
10. The Respondent is the tenant of the property.
11. The Respondent is due to pay rent at the rate of £650 per month.
12. The Respondent owes the sum of £16,942.60 in unpaid rent to the Applicant.
13. The Applicant served an AT6 Notice on the Respondent on 21 January 2025.
14. The Applicant has issued letters and emails in compliance with the Rent Arrears Pre Action-Protocol.
15. The Respondent has engaged in antisocial behaviour at the property.
16. The Respondent was convicted of an offence punishable by imprisonment which occurred at the property, namely a contravention of Section 3(1)(b) of the Hate Crime and Public Order (Scotland) Act 2021.
17. The Respondent resides at the property alone and is believed to be unemployed.

Reasons for Decision

18. The application was submitted with a short assured tenancy agreement. A notice to quit was not submitted with the application. The Applicant relies on Section 18(6) and 18(6)A of the 1988 Act. Section 18(6) stipulates that the Tribunal can grant an order for possession of a property on certain grounds, in the absence of a valid Notice to Quit, if "(b) the terms of the tenancy make provision for it to be brought to an end on the ground in question." This section applies to grounds 11, 12 13, and 14. Section 18(6)A extends this arrangement to ground 15. The grounds relied upon in the application are narrated in full in the tenancy agreement as grounds upon which the landlord might seek possession of the property. The AT6 Notice is in the prescribed format and

specifies grounds the relevant grounds. It states that the earliest date that proceedings can be taken is 5 February 2025, giving the Respondent two weeks' notice, as required by Section 19(4) of the 1988 Act. A copy of a section 11 Notice has also been lodged, with evidence that it was sent by email to the Local Authority. The Tribunal concludes that the Applicant has complied with Sections 19 and 19A of the 1988 Act.

19. Section 18 of the 1988 Act (as amended by the Coronavirus (Recovery and Reform) (Scotland) Act 2022 states: -

(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 the Act.

(4) If the First-tier Tribunal is satisfied that any of the grounds in Part i or Part 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 Scottish Ministers in regulations.

20. Ground 11 of Schedule 5 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.". 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".

21. The Applicant submitted a rent statement with the application and a copy of a payment order granted by the Tribunal on 19 May 2022. Based on the documents lodged and the information provided at the CMD, the Tribunal is satisfied that grounds 11 and 12 are established. The rent account has been in arrears since 2019. At the time of service of the AT6 notice the Respondent owed over £16000. By the date of the CMD, the total sum which was unpaid was £16,942.60.

22. Ground 13 states “Any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed”. The Applicant states that the Respondent has failed to comply with the tenancy agreement in relation to providing access for inspections. There is a clause in the tenancy agreement which states that access must be provided for inspection. The only evidence submitted in connection with this ground is a letter addressed to the Respondent which states that access is required for inspection and electrical work. The representatives provided some additional information at the CMD although this lacked specification. They also confirmed that access was provided to the electrician, although not to the agent. The Tribunal is not persuaded that this ground is established, due to the limited information and evidence submitted.
23. Ground 14 states, “The condition of the house or of any of the common parts has deteriorated owing to acts of waste by, or the neglect or default of the tenant...”. It includes to other occupiers and visitors to the property. The basis for this ground is that the Respondent had carried out acts of vandalism in the common parts of the property by writing racist and other offensive comments. The Tribunal is not persuaded that this ground necessarily applies to deliberate acts of vandalism, rather than a failure to look after the property. However, even if it does, the Tribunal does not find this ground to be established. There was no evidence lodged with the application and the representatives confirmed that there is no evidence that the Respondent was responsible for the vandalism.
24. Ground 15 states – “ The tenant, a person residing or lodging in the house with the tenant or a person visiting the house has – (a) been convicted of – (i) using or allowing the house to be used for immoral or illegal purposes; or (ii) an offence punishable by imprisonment committed in, or in the locality of, the house; or (b) acted in an antisocial manner in relation to a person residing, visiting or otherwise engaged in lawful activity in the locality; or (c) pursued a course of antisocial conduct in relation to such a person as is mentioned in head (b) above”. Antisocial is defined as conduct which has caused or is likely to cause alarm, distress, nuisance or annoyance.
25. The Tribunal is satisfied, based on the documents lodged with the application and the information provided at the CMD, that this ground is established. The Respondent has been convicted of a relevant offence in terms of 15(a)(ii). The Respondent has also engaged in behaviour towards other residents in the block which has caused alarm and distress (15(b) and (c).
26. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession in relation to the established grounds (11,12 and 15) and noted the following: -
- (a) The Respondent did not participate in the CMD or advise the Tribunal if the application is opposed.

- (b) The Applicant has issued letters in compliance with the Rent Arrears Pre Action-Protocol. Their agent has also made efforts to engage with the Respondent in relation to the arrears of rent, without success
- (c) There is no information or evidence to suggest that the arrears are due to a delay or failure in the payment of a relevant benefit, such as housing benefit or universal credit.
- (d) The rent arrears are substantial, and the Respondent has made no payments to the arrears.
- (e) The Respondent has failed to engage with the Applicant and has provided no reasons for his failure to pay rent.
- (f) The antisocial behaviour is serious. The Respondent has racially abused other residents using offensive language. He has caused them to suffer fear and alarm. The conviction is also a serious one, committed against a child. An alternative to a custodial sentence was imposed.
- (g) The Respondent's behaviour has caused tenants to seek alternative housing elsewhere.

27. For the reasons outlined, the Tribunal is satisfied that it would be reasonable to grant the order for possession.

28. As the Applicant has complied with the requirements of the 1988 Act, and as the Tribunal is satisfied that it would be reasonable to grant the order, the Tribunal determines that an order for possession should be granted.

Decision

29. The Tribunal determines that an order for possession of the property should be granted against the Respondent.

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.

Josephine Bonnar

Josephine Bonnar, Legal Member

27 April 2025

