

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/EV/24/3647

Re: Property at 4 Leven Place, Glenrothes, Fife, KY7 5AZ (“the Property”)

Parties:

Mr David McIvor, Davine House, Markinch, Fife, KY7 6NP (“the Applicant”)

Ms Amanda Mowatt, 4 Leven Place, Glenrothes, Fife, KY7 5AZ (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member) and David Fotheringham (Ordinary Member)

Decision (in absence of the Respondent)

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

BACKGROUND

1. During 2014 the Applicant let the Property to the Respondent. The lease is an assured tenancy. No notice in terms of section 32 of the Housing (Scotland) Act 1988 (“the 1988 Act”) – commonly referred to as a form AT5 – was served upon the Respondent.
2. The initial period of let was from 8th August 2014 until 8th August 2015.
3. The lease contained conditions which included an obligation on the tenant to allow the Applicant access to the Property to inspect the condition of the Property, to carry out repairs and to do other work necessary. Separately, the lease contained a condition requiring the Respondent to be responsible for looking after the garden, keeping it tidy and cutting grass regularly.

4. The Respondent, on various occasions over a number of years, refused access to the Property. This resulted in gas safety certificates not being able to be completed. Separately, the Respondent failed to maintain the garden as required in terms of the lease.
5. Access to the Property was only gained by the Respondent following a separate application to the Tribunal seeking a right of entry order. Following such an order being granted, with the assistance of a Tribunal member and sheriff officers, the Applicant ultimately secured access to the Property on 26th March 2025.
6. Prior to then, the Applicant had presented an application to the Tribunal seeking an order for eviction under grounds 13 and 14 of schedule 5 to the 1988 Act.
7. A Notice to Quit was served upon the Respondent.
8. A notice in terms of s19 of the 1998 Act - commonly referred to as a form AT6 - was served upon the Respondent.
9. A notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority.

THE CASE MANAGEMENT DISCUSSION

10. A Case Management Discussion was assigned to be conducted by conference call at 10am on 25th April 2025. The Applicant participated personally in the case management discussion. The Respondent did not participate.
11. The Case Management Discussion did not convene until 10:07am. It concluded at 10:37am.
12. As the Respondent had not participated at the commencement of the Case Management Discussion, the legal member requested the Tribunal clerk to leave the conference call open to enable the Respondent to join the proceedings late, if she intended to do so. The Respondent did not join the conference call at any stage and, accordingly, did not participate in the case management discussion.
13. The Tribunal was in receipt of a certificate of intimation by Sheriff Officers confirming that the proceedings had been intimated upon the Respondent. In the circumstances, the Tribunal was satisfied in terms of Rule 24 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the FTT Regs") that the respondent had received intimation of the date and time of the Case Management Discussion and considered that it was appropriate to proceed with the Case Management

Discussion in the absence of the Respondent in accordance with Rule 29 of the FTT regs

14. Mr McIvor advised the Tribunal that he was seeking an order for eviction. He referred to documentation submitted in the course of his application confirming the repeated failures to allow access to the Property, including to enable gas safety certificates to be completed and to have a boiler checked/repaired, and referred to the separate proceedings before the Tribunal to obtain a right of entry order, which order was subsequently granted. It is only after obtaining an order from the Tribunal that he managed to gain entry to the Property.
15. Entry was obtained on 26th March 2025. Photographs were taken at that time. The photographs showed various issues which concerned the Applicant in relation to the internal parts of the Property. Separately, the photographs made it clear that the garden ground had not been maintained for a significant period of time. The applicant had, indeed, previously provided earlier photographs of the garden ground of a similar nature showing the garden to be in a poor condition with the grass and hedges clearly not having been cut or trimmed for some time. There appeared to be damage to parts of the building too, including the roof.
16. On the basis of the information provided by the Applicant, and in the absence of any contrary information provided by the Respondent, the Tribunal determined that it was appropriate to grant an eviction order in terms of grounds 13 and 14 of schedule 5 to the 1988 Act.

FINDINGS IN FACT

17. The Tribunal found the following facts to be established :-
 - a) During 2014 the Applicant let the Property to the Respondent. The lease is an assured tenancy.
 - b) The initial period of let was from 8th August 2014 until 8th August 2015.
 - c) The lease contained a condition that the tenant allow the Applicant access to the Property to inspect the condition of the Property, to carry out repairs and to do other work necessary.
 - d) The Respondent breached this condition, repeatedly refusing entry to the Applicant and a tradesman instructed on his behalf.
 - e) The repeated refusal of the Applicant to allow entry in accordance with the lease resulted in the Applicant requiring to obtain a right of entry order from the Tribunal.
 - f) The lease contained a condition requiring the Respondent to be responsible for looking after the garden, keeping it tidy and cutting grass regularly.
 - g) The Respondent breached this condition.
 - h) Conditions of the tenancy (other than ones related to the payment of rent) have been broken or not performed.
 - i) The roof of the Property is in need of repair.

- j) The condition of the Property has deteriorated owing to acts of neglect or default of the tenant.
- k) A Notice to Quit was served upon the Respondent.
- l) A notice in terms of s19 of the 1998 Act - commonly referred to as a form AT6 - was served upon the Respondent.
- m) A notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority.

DECISION

The Tribunal granted an order against the Respondent for possession of the Property under section 18 and grounds 13 and 14 of Schedule 5 of the Housing (Scotland) Act 1988.

Order not to be executed prior to 12 noon on 2nd 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.

Legal Member: Virgil Crawford

Date: 25th April 2025

Virgil Crawford