

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) under Section 16 of the Housing (Scotland) Act 2014 and Section 18 of the Housing (Scotland) Act 1988.

Chamber Ref: FTS/HPC/EV/24/3087

Re: Property at 2/1, Glebe Mill Street, Hawick, TD9 9QD (“the Property”)

Parties:

Mr Barry Haig, residing at The Long House, Dunsyre Road, Newbiggin, ML11 8NA (“the Applicant”); and

Mr Michael Elsender, residing at 2/1, Glebe Mill Street, Hawick, TD9 9QD (“the Respondent”)

Tribunal Members:

G McWilliams- Legal Member

A Khan- Ordinary Member

Decision in the absence of the Respondent:

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determines to grant the Application.

Background and Case Management Discussion on 29th April 2025

1. This Application has been brought in terms of Rule 65 (Application for an order for possession in relation to assured tenancies) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”).
2. The parties entered into a short-assured tenancy agreement with a commencement date of 20th October 2016. The Applicant, Mr Haig, served a Notice to Quit the Property, no later than 22nd August 2024, upon the Respondent, Mr Elsender, as well as a Notice of Intention to raise Tribunal Proceedings for possession of the Property, on 9th June 2024. The latter Notice stated that proceedings were to be raised on the basis of Ground 15 in Schedule 5 to the Housing (Scotland) Act 1988 (“the 1988 Act”), principally that Mr Haig considers

that Mr Elsender has been convicted of using or allowing the Property to be used for illegal purposes; or in respect of an offence punishable by imprisonment committed in, or in the locality, of the Property.

3. A Case Management Discussion (“CMD”) proceeded by remote tele-conference call at 2.00pm on 29th April 2025. The Applicant, Mr Haig, attended. The Respondent, Mr Elsender, did not attend and was not represented. The Tribunal noted that Sheriff Officers had served copies of the Application papers, and notification of the CMD, on Mr Elsender personally at the Property on 12th March 2025.
4. Mr Haig referred to the Application and the various supporting papers and e-mails he had submitted to the Tribunal's office. He said that he was aware that Mr Elsender had been convicted of an offence of communicating indecently with a person that he thought was a 12 year old girl. He said that he was not aware of the sentence that Mr Elsender received in respect of the offence. Mr Haig stated that he wishes to recover possession of the Property given the circumstances of the offence. Mr Haig said that the Property is situated near to a local primary school and this gives him cause for concern. He stated that the Property had been vandalised by neighbours following Mr Elsender's conviction. Mr Haig stated that he considered it appropriate that the Tribunal grant the eviction order in terms of Ground 15 in Schedule 5 to the 1988 Act and that, in all the circumstances, it is reasonable for the Tribunal to do so.

Findings in Fact and Law

5. The parties have a tenancy agreement which began on 20th October 2016.
6. The Applicant Mr Haig wishes to recover possession of the Property following the Respondent Mr Elsender's criminal conviction.
7. The Respondent, Mr Elsender, has not objected to Mr Haig's request for an eviction order.
8. The Ground upon which the Application proceeds, namely Ground 15 in Schedule 5 to the 1988 Act, is satisfied.
9. It is reasonable that an order for possession is granted.

Reasons for Decision

10. Section 16 of the Housing (Scotland) Act 2014 provides as follows:

“16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

- (a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),
- (b) a Part VII contract (within the meaning of section 63 of that Act),
- (c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

11. Accordingly, the Tribunal now has jurisdiction in relation to claims by landlords, such as the Applicant, against tenants, such as the Respondent, for possession relating to a tenancy agreement, such as the parties' tenancy agreement.
12. In terms of Section 18 of the 1988 Act the Tribunal shall not make an order for possession of a house let on a tenancy except on one or more of the grounds set out in Schedule 5 to the 1988 Act.
13. Ground 15 in Schedule 5 to the 1988 Act provides that it is an eviction ground that a tenant has been convicted of i) using or allowing the house ("Property") to be used for immoral or illegal purposes; or ii) an offence punishable by imprisonment committed in, or in the locality, of the house.
14. Given the nature and circumstances of the offence committed by the Respondent, Mr Elsander, which is a matter of public record, the Tribunal found in fact and law that Ground 15 in Schedule 5 to the 1988 Act is satisfied. As Mr Elsander has not engaged with the Tribunal in respect of the Application, and has not made any representations or attended at the CMD, to oppose or state a contradiction to the terms of the Application, the Tribunal decided that it is reasonable to grant an eviction order.

Decision

15. The Tribunal grants an eviction order.

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.

G McWilliams

29th April 2025

Tribunal Legal Member

Date