

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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

**Chamber Ref: FTS/HPC/EV/24/5579**

**Re: Property at 42 Bloomfield Road, Arbroath, DD11 3LQ (“the Property”)**

**Parties:**

**Mr Marc Carrie, Ms Dawn Swankie, Top floor flat, 96 Auchmill Road, Bucksburn, Aberdeen, AB21 9LQ; 56 Kinnaird Street, Arbroath, DD11 4EE (“the Applicants”)**

**Mr Stuart Gall, 42 Bloomfield Road, Arbroath, DD11 3LQ (“the Respondent”)**

**Tribunal Members:**

**Virgil Crawford (Legal Member) and Elizabeth Williams (Ordinary Member)**

**Decision (in absence of the Respondent)**

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

**BACKGROUND**

1. By Lease dated 26 October 2012 the Applicants let the Property to the Respondent and his wife, Mrs Lynne Mona Gall.
2. Mrs Lynne Mona Gall no longer resides at the Property and lives permanently at an address in Forfar.
3. The lease purports to be a short assured tenancy agreement. It is accepted by the Applicants, however, that no notice in terms of s32 of the Housing (Scotland) Act 1988 (“the 1988 Act”) – commonly referred to as a Form AT5 – was served upon the tenants prior to the lease being executed. The lease, therefore, is an assured tenancy.

4. The Initial period of let was from 26 October 2012 until 26 April 2013.
5. Prior to the lease being entered into both, Applicants occupied the Property as their principal home.
6. The Applicants separated from one another and entered into a separation agreement in terms of which the Applicants agreed that the Property would be sold and the proceeds distributed in accordance with the terms of the agreement. Said agreement was dated 28 and 31 August 2012 and registered in the Books and Counsel and Session on 4 September 2012.
7. Following the separation of the Applicants, they were unable to sell the Property and, as a result, decided to lease the Property to the Respondent and his wife.
8. The Applicants now wish to recover possession of the Property and to sell the same and distribute the proceeds in compliance with the agreement entered into by them at the time of their separation.
9. A Notice to Quit dated 1 July 2024 was served upon the tenants. The Notice to Quit gave Notice that the tenants were required quit and remove themselves from the property on or before 26 October 2024.
10. A Notice in terms of s19 of the 1988 Act – commonly referred to as a Form AT6 – was served upon the Respondents. This Notice intimated that recovery of possession was sought under ground 1 of Schedule 5 of the 1988 Act.
11. A Notice of terms s11 of the Homeless Etc (Scotland) Act 2003 was intimated to the Local Authority.
12. An application seeking an Eviction Order was presented to the Tribunal on 3 December 2024.

## **THE CASE MANAGEMENT DISCUSSION**

13. The first named Applicant, Marc Carrie participated personally in the Case Management Discussion. The second named Applicant did not participate personally. Both the Applicants, however, were represented by Mr C Gordon of Thorntons Law LLP. The Respondent did not participate in the Case Management Discussion. The Tribunal, however, 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 Gordon moved the Tribunal to grant an eviction order in terms of ground 1 of Schedule 5 of the 1988 Act.
15. Ground 1 allows an eviction if, not later than the beginning of the tenancy, the landlord gave notice in writing to the tenant that possession might be recovered, or if the Tribunal considers it reasonable to dispense with such notice, if, at any time before the beginning of the tenancy, the landlords who are seeking possession, or at least one of them, occupied the Property as their only or principal home.
16. In this case both Applicants occupy the Property as their principal home prior to their separation.
17. No Notice had been given to the Respondents prior to the commencement of the tenancy as the Applicants, without legal representation, dealt with the lease themselves. The Applicants following their separation and prior to entering into the lease with the tenants, entered into an agreement between themselves whereby the Property was to be sold and the proceeds distributed in accordance with the terms of that agreement.
18. The Tribunal was asked to allow the application to proceed under ground 1 as the Respondent had been given ample notice of the intention to recover possession by way of the Notice to Quit and the Form AT6 being served upon him and, thereafter, the Tribunal proceedings being intimated upon him.
19. The Tribunal considered it reasonable to dispense with the requirement of notice prior to commencement of the tenancy in relation to ground 1 of Schedule 5 of the 1988 Act.
20. The Tribunal enquired in relation to the personal circumstances of the Respondent. As far as the Applicants are aware, the Respondent is "in his late 30's / early 40's". He is believed to work as an electrician, being employed by someone else, rather than being self employed. He is not known to have any medical issues affecting him.
21. The Respondent is believed to reside at the Property alone. When Mr Carrie, the first named Applicant, last carried out an inspection at the property it was apparent to him that someone else had been living there. He enquired about that as no other person should have been occupying the Property. He was advised that an adult stepdaughter of the Respondent was residing there but she would only be there temporarily as she had her own tenancy elsewhere. There are no other persons residing at the Property.
22. Towards the end of 2024 the Respondent missed two full rental payments. While rental payments resumed in December 2024, the Respondent is still in two months of arrears.

23. While the condition of the Property did not form any basis of the application for an order for eviction, Mr Carrie advised the Tribunal that the Respondent had cut down a memorial tree in the front garden of the Property. He had no permission to do so and it was not appropriate that he did so. The internal condition of the Property is poor. It appears the Respondent has been allowing a dog to chew or otherwise damage woodwork within the Property. The Property is in a poor state of cleanliness.
24. While these matters did not form any basis for an application for eviction, they were considered relevant in relation to the issue of reasonableness of the grant of an eviction order.
25. In the circumstances, the Tribunal, having considered it reasonable to dispense with the requirement of notice in relation to ground 1 of Schedule 5 of the 1988 Act, thereafter considered it reasonable to grant an order for eviction.

## **FINDINGS IN FACT**

26. The Tribunal found the following facts to be established:-
- a) By Lease dated 26 October 2012 the Applicants let the Property to the Respondent and his wife, Mrs Lynne Mona Gall.
  - b) Mrs Lynne Mona Gall no longer resides at the Property and lives permanently at an address in Forfar.
  - c) The lease is an assured tenancy.
  - d) The Initial period of let was from 26 October 2012 until 26 April 2013.
  - e) Prior to the lease being entered into both, Applicants occupied the Property as their principal home.
  - f) The Applicants separated from one another in 2012 and entered into a separation agreement in terms of which the Applicants agreed that the Property would be sold and the proceeds distributed in accordance with the terms of the agreement. Said agreement was dated 28 and 31 August 2012 and registered in the Books and Counsel and Session on 4 September 2012.
  - g) Following the separation of the Applicants, they were unable to sell the Property and, as a result, decided to lease the Property to the Respondent and his wife.
  - h) The Applicants wish to recover possession of the Property and to sell the same and distribute the proceeds in compliance with the agreement entered into by them at the time of their separation.
  - i) A Notice to Quit dated 1 July 2024 was served upon the tenants. The Notice to Quit gave Notice that the tenants were required quit and remove themselves from the property on or before 26 October 2024.
  - j) A Notice in terms of s19 of the 1988 Act was served upon the Respondents. This Notice intimated that recovery of possession was sought under ground 1 of Schedule 5 of the 1988 Act.
  - k) A Notice of terms s11 of the Homeless 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 ground 1 of Schedule 5 of the Housing (Scotland) Act 1988.

Order not to be executed prior to 12 noon on 9<sup>th</sup> July 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.**

# V.Crawford

**Legal Member/Chair**

**Date: 2 June 2025**