



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/24/5751

Re: Property at Pitchfork, Culbokie, Dingwall, IV7 8JX (“the Property”)

Parties:

Mr John Kerrison, Pasquaney Lodge, Culbokie, Dingwall, IV7 8JX (“the Applicant”)

Mr William Kilpatrick, Pitchfork, Culbokie, Dingwall, IV7 8JX (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that grounds 11 and 12 of schedule 5 of the Housing (Scotland) Act 1988 (“the 1988 Act”) have been met in this case and it would be reasonable to make an eviction order.

The Tribunal therefore made an eviction order under section 18 of the 1988 Act.

Background

- 1 This is an application under rule 65 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) and section 18 of the 1988 Act. The Applicant relied upon grounds 11 and 12 of schedule 5 of the 1988 Act as the grounds for possession, stating that the Respondent was in arrears of rent.
- 2 The application was referred to a case management discussion (“CMD”) to take place by teleconference on 22 July 2025. The Tribunal gave notice of the CMD to the parties in accordance with rule 17(2) of the Rules. Said notice was

served upon the Respondent by sheriff officers on 16 April 2025. Both parties were invited to make written representations in advance of the CMD.

- 3 On 2 July 2025 the Tribunal received written representations from the Applicant's representative, David Thomas of Firthview Property Management, which included an updated rent statement and a signed copy of the renewal agreement. On 21 July 2025 the Tribunal received a further rent statement from the Applicant's representative. No written representations were received from the Respondent in advance of the CMD.

The CMD

- 4 The CMD took place on 22 July 2025 at 10am by teleconference. Mr Thomas represented the Applicant who was also in attendance. The Respondent did not join the call. The Tribunal delayed the start time of the CMD for a short period before determining to proceed in his absence, noting that he had received proper notice of the CMD in accordance with rule 17(2) of the Rules.

- 5 The Tribunal had the following documents before it:-

- (i) Form E application form;
- (ii) Sasine sheet confirming the Applicant's ownership of the property;
- (iii) Excerpt from the online landlord register confirming the Applicant's landlord registration;
- (iv) Short assured tenancy agreement between the parties, and renewal agreement;
- (v) Form AT6 and proof of delivery upon the Respondent by sheriff officers;
- (vi) Rent statements;
- (vii) Copy emails from the Applicant's representative to the Respondent in accordance with the rent arrears pre-action protocol;
- (viii) Section 11 notice and proof of delivery to the local authority;
- (ix) Extract death certificate for Karen Kilpatrick; and
- (x) Written mandate from the Applicant authorising Firthview Property Management to represent him.

- 6 The Tribunal proceed to hear submissions from Mr Thomas and the Applicant on the application. The following is a summary of the key elements of the submissions and not a verbatim account.

- 7 Mr Thomas explained that the Applicant sought an eviction order. The property had been let to the Respondent under a short assured tenancy agreement in 16 June 2016. The Respondent's wife had subsequently passed away in October 2019. The Respondent was aged 73. Mr Thomas believed he was in receipt of a state and workplace pension. There had not been any change in the Respondent's circumstances that the Applicant was aware of. Mr Thomas explained that the Applicant had not increased the rent over the term of the tenancy, despite comparable market rents being in the region of £1500. The arrears now stood at £9145. There was no suggestion that the Respondent was entitled to any benefits that would address the arrears. Mr Thomas believed the

tenancy had simply become unaffordable for the Respondent. An eviction order would provide him with the opportunity to move to more affordable accommodation. The Respondent resided alone in the property, which was a large four bedroom bungalow in a rural setting. Mr Thomas confirmed that he had spoken with the local authority who had written to the Respondent following receipt of the section 11 notice. Mr Thomas understood they would be reaching out to the Respondent again to offer assistance.

- 8 The Applicant outlined the financial difficulties he had experienced as a result of the arrears. He had a low income with three children at university. He had one other rental property close to his own home. The Applicant and the Respondent had a cordial relationship. The Respondent did not have a car and the Applicant would often assist with taking him shopping or to appointments. The Applicant believed the Respondent was vulnerable in the let property. He was isolated and would benefit from being moved to a community setting. The Respondent did not have any children but had mentioned having family in the Stirling area.
- 9 The Tribunal adjourned to deliberate, at which point parties left the call, before resuming the CMD and confirming the outcome.

Findings in fact

- 10 The Applicant is the landlord, and the Respondent is the tenant, of the property in terms of a short assured tenancy agreement which commenced on 16 June 2016. The tenancy was a joint tenancy between the Respondent and Karen Kilpatrick, who passed away in 2019.
- 11 In terms of clause 1.10 of the tenancy agreement the Respondent undertook to pay rent at the rate of £995 per calendar month.
- 12 The Respondent has failed to pay rent as agreed. The Respondent's payments towards the rent account have been sporadic and inconsistent.
- 13 On 7 November 2024 the Applicant served the Respondent with a Form AT6 Notice of Intention to Raise Proceedings for Possession. The Form AT6 included grounds 11 and 12 and stated that proceedings for possession would not be raised any earlier than 22 November 2024.
- 14 The said tenancy agreement confirms at clause 5.5 that the Applicant may seek possession of the property on grounds 11 and 12.
- 15 As at the date the Form AT6 was served upon the Respondent, rent arrears in the sum of £6190 were outstanding.
- 16 The rent arrears have increased to £9145 as at the date of this decision.
- 17 The arrears are not known to be due to any delay or failure in the payment of a relevant benefit.

- 18 The Applicant has written to the Respondent reminding of his rental obligations, advising him of the arrears, offering to enter into payment plans, and directing him to various agencies for advice and support.
- 19 The Respondent is aged 73 and resides alone. The Respondent is in receipt of a state and workplace pension.
- 20 The property is a large four bedroom bungalow in a rural setting.
- 21 The local authority have been in touch with the Respondent and have offered him assistance in response to this application.
- 22 The Applicant has experienced financial difficulties because of the rent arrears.

Reasons for decision

- 23 The Tribunal was satisfied that it could make relevant findings in fact in order to reach a decision on the application following the CMD, in the absence of a hearing under rule 18 of the Rules. The Respondent had not sought to challenge the information provided by the Applicant and there were no issues to be resolved that would require an evidential hearing to be fixed.
- 24 The Tribunal considered the wording of section 18 of the 1988 Act:-

“(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.

(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 the Scottish Ministers in regulations.

(5)Part III of Schedule 5 to this Act shall have effect for supplementing Ground 9 in that Schedule and Part IV of that Schedule shall have effect in relation to notices given as mentioned in Grounds 1 to 5 of that Schedule.

(6)The First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless—

(a)the ground for possession is Ground 2... in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9... Ground 10 , Ground 15 or Ground 17; and

(b)the terms of the tenancy make provision for it to be brought to an end on the ground in question.”

- 25 The effect of section 18(6) is that the Tribunal cannot make an eviction order in relation to a contractual assured tenancy if the landlord has not terminated the contractual tenancy by service of a notice to quit, unless the tenancy agreement makes specific provision for the possession to be sought on the grounds in question. In this case, the tenancy agreement explicitly provides that the Applicant may seek possession in terms of grounds 11 and 12 of schedule 5 of the 1988 Act. The Tribunal was therefore satisfied that there was no requirement for the Applicant to terminate the contractual assured tenancy between the parties prior to seeking possession on those grounds.
- 26 Section 19 of the 1988 further provides that *“the First-tier Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless (a) the landlord has served the tenant with a notice in accordance with this section; or (b) the Tribunal considers it reasonable to dispense with the requirement of such a notice”*. The Tribunal, having considered the Form AT6 submitted by the Applicant, was content that notice had been given to the Respondent in accordance with section 19.
- 27 The Tribunal therefore went on to consider whether grounds 11 and 12 have been met in this case. Grounds 11 and 12 are in the following terms:-

“Ground 11

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

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.”

- 28 The Tribunal was satisfied based on the rent statement produced by the Applicant that the Respondent had failed to pay rent in full over a prolonged period of time, resulting in a significant balance of arrears. Whilst some

payments had been made to the rent account by the Respondent, these were sporadic and inconsistent. When the AT6 was served upon the Respondent, the arrears stood at £6190. They had since increased to £9145. The Tribunal therefore concluded that the provisions of grounds 11 and 12 had been met in this case.

- 29 Section 18(4) of the Act provides that the Tribunal shall not make an eviction order unless it considers it reasonable to do so. The Tribunal therefore required to identify those factors relevant to reasonableness in this case and determine what weight to give them.
- 30 The Tribunal took into account the level of arrears, and the length of time over which they had accrued. The rent account had been in persistent arrears since January 2023. There was no suggestion that the arrears were due to any failure to delay in the payment of a relevant benefit. The Tribunal also accepted based on the correspondence produced by the Applicant that efforts had been made to engage with the Respondent in accordance with the requirements of the rent arrears pre-action protocol. The Applicant had made the Respondent aware of his rental obligations, had offered to enter into payment plans and had directed him to agencies for advice and support. It was clear that the Applicant had tried his best to support the Respondent and that this application was a last resort. These were all factors to which the Tribunal gave significant weight.
- 31 The Tribunal carefully considered the Respondent's circumstances. The information the Tribunal had in this regard was limited to the submissions from Mr Thomas at the CMD, which the Tribunal accepted in the absence of any contradictory evidence from the Respondent himself. Mr Thomas clearly had knowledge of the Respondent from his role managing the tenancy on the Applicant's behalf. Whilst the Tribunal had concerns about the risk of homelessness to the Respondent given his age, he had not sought to oppose the order. It appeared he was in receipt of a regular income from his two pensions and therefore likely able to pay rent for another let property if necessary. The Tribunal also accepted the views of both Mr Thomas and the Applicant regarding the affordability of the rent for the property. The Respondent was the sole occupier of a four bedroom home. It was reasonable to assume that the rent for the property was no longer affordable for him and that it would likely be in the Respondent's interest to find a smaller more suitable property.
- 32 Accordingly, taking the above facts into account as relevant to reasonableness, the Tribunal concluded that the balance weighed in favour of making an eviction order.
- 33 The decision of the Tribunal was unanimous.

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.

Ruth O'Hare

22 July 2025

Legal Member/Chair

Date