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 18 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/25/0502

Re: Property at 53 Highfield Crescent, Motherwell, ML1 4BN ("the Property")

Parties:

Mr James Smith, 89 North Orchard Street, Motherwell, ML1 3JL ("the Applicant")

Mr Liam Lawry, 53 Highfield Crescent, Motherwell, ML1 4BN ("the Respondent")

Tribunal Members:

Nairn Young (Legal Member) and Tony Cain (Ordinary Member)

Decision (in absence of the Respondent)

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

- Background

This is an application for an order for possession of the Property, which is occupied by the Respondent in terms of a short assured tenancy agreement with the Applicant. It called for a case management discussion ('CMD') at 10am on 23 July 2025, by teleconference. The Applicant was represented on the call by Mr Gildea, of John Jackson & Dick, solicitors. The Respondent was not on the call and was not represented. The commencement of the CMD was delayed by 10 minutes, in case of any technical difficulty; but there remained no contact from him.

Notice of the application and the CMD were served on the Respondent by sheriff officers on 5 June 2025. The Tribunal were therefore satisfied that the Respondent

was aware of the matter and had chosen not to defend it; and that it was therefore fair to proceed in his absence.

- Findings in Fact

The following facts from the application were relied on by the Tribunal, as unopposed:

1. The Respondent entered into a short assured tenancy agreement with the Applicant in respect of the Property, with an initial term of 23 February 2017 to 23 August 2017.

2. The tenancy has run on after the initial term by tacit relocation.

3. The tenancy contains a term, as follows (so far as is relevant to this case):

   "20. The tenancy may not be brought to an end except:
   …
   (d) By a court order for the recovery of possession where the tenant has failed to pay the rent or is in breach of any other condition of this tenancy agreement. …"

4. By letter dated 13 January 2025, and delivered on 16 January 2025, the landlord purported to give notice to quit to the Respondent, effective on 31 January 2025.

5. A form AT6 was served by the Applicant on the Respondent alongside the purported notice to quit, indicating an intention to rely on ground 12 of Schedule 5 to the Housing (Scotland) Act 1988 ('the Act') in any proceedings to follow.

- Reasons for Decision

6. Sections 18 and 19 of the Act read (so far as is relevant to this case):

“18.— Orders for possession.

(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. ...

(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.

(7) Subject to the preceding provisions of this section, the First-tier Tribunal may make an order for possession of a house on grounds relating to a contractual tenancy which has been terminated; and where an order is made in such circumstances, any statutory assured tenancy which has arisen on that termination shall, without any notice, end on the day on which the order takes effect. …

19.— Notice of proceedings for possession.

(1) The First-tier Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless—

(a) the landlord (or, where there are joint landlords, any of them) has served on the tenant a notice in accordance with this section; or

(b) the Tribunal considers it reasonable to dispense with the requirement of such a notice. …"

7. Ground 12 of Schedule 5 to the Act (which is in Part II of that Schedule) reads:

"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."

8. After some exchange of correspondence between the Legal Member who initially considered the validity of the application during the sift and the Applicant's representative, it was accepted by the Applicant that the purported notice to quit dated 13 January 2025 was not valid, in that it failed to provide adequate notice in terms of s.112 of the Rent (Scotland) Act 1984 and sought to terminate the tenancy on a date that was not an ish date. That means that the tenancy agreement continues as a contractual tenancy; and thus that the Tribunal may not grant an order for possession, unless the exception set out in s.18(6) of the Act applies.

9. The Applicant relies on ground 12 in Part II of Schedule 5 to the Act, so the requirement I s.18(6)(a) is straightforwardly met. The primary issue to be determined at the CMD was therefore whether the terms of the tenancy agreement, "make provision for it to be brought to an end on the ground in question," *per* s.18(6)(b). The Tribunal was directed to the leading authority on

interpretation of this subsection, the judgement of Sheriff Principal Wheatley QC in the case of *Royal Bank of Scotland* v *Boyle* 1999 HousLR 63 ('*RBS*'). The Applicant's representative submitted that the principle elucidated in that case was that it was not necessary for the tenancy agreement to repeat the ground relied on verbatim as a reason for termination of the lease; but that the essentials of the ground required to be set out.

10. Although the Sheriff Principal went on to find that that lease was deficient in that regard, the current case can be distinguished from it, in that ground 12 is what is relied on. In *RBS*, grounds 8 and 11 were relied on, and both of those involve additional requirements over-and-above the mere fact that rent is outstanding. In the case of ground 8, the requisite amount of rent had to be due not only on the date that the AT6 was served, but also on the date of the hearing, thus allowing an opportunity for the tenant to address the issue (or 'purge the irritancy', in the technical language). In the case of ground 11, the rent arrears had to be persistent in nature. Neither limitation on the right to terminate on the grounds of rent arrears was replicated in the tenancy agreement in *RBS*, and thus, it was found, important elements of the essence of each ground were missing (para.12-12 of the judgement). In this case, however, the tenancy agreement says that the lease may be terminated, "By a court order for the recovery of possession where the tenant has failed to pay the rent…". That is the essence of ground 12, which does not ask either for rent to be outstanding also at the date of the hearing, or for arrears to be persistent in nature.

11. The Tribunal considered that this submission was ultimately ill-founded. It is true that the requirements to establish ground 12 are not the same as either ground 8 or 11; but there is still more to that ground than just a requirement that the tenant has, at some point, failed to pay rent. It is notable that Sheriff Principal Wheatley, in his consideration of whether the essence of ground 8 had been replicated in the tenancy agreement in *RBS*, focussed especially, not on the requirement that at least three months rent be outstanding, but rather on the requirement that the tenant have an opportunity to address the arrears. While the specific dates in question are different, that is also a

requirement of ground 12, in that the tenant must be in arrears on the date of service of an AT6 and also on the date when proceedings for recovery of possession are begun. It is a key qualification on the right of the landlord to terminate the tenancy, for the reason that Sheriff Principal Wheatley identified in relation to ground 8: that is, it gives the tenant the opportunity to address the issue, such that they can remove the ground for termination entirely. The tenancy agreement in this case does not afford that option.

12. The Tribunal does not consider that the fact that the requirement for an AT6 might (at least in theory) be avoided in terms of s.19(1)(b) has any impact on this reasoning. There is no reference in the tenancy to either an AT6, or the circumstances under which proceedings may advance without one. To the extent that the latter approach could be taken, s.19(1)(b) imports an additional essential requirement (of reasonableness) that is also not replicated in the tenancy agreement.

13. The application therefore falls to be refused, on the basis that the contractual tenancy is still in existence, and the agreement does not make provision for it to be terminated on the ground relied on.

- Decision

Application refused.

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.

N Young

Nairn Young
Legal Member/Chair

23rd July 2025
Date