



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Rule 17 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 18(6) of the Housing (Scotland) Act 1988 (“the 1988 Act”) and Rule 65 of the Rules

Chamber Ref: FTS/HPC/EV/24/4233

Re: Property at 15 (1F1) Learmonth Avenue, Edinburgh, EH4 1DG (“the Property”)

Parties:

Ms Joyce Boyd, 12 Learmonth Place, Edinburgh, EH4 1AU (“the Applicant”) per her representatives, D.J. Alexander, The John Cotton Centre, 10, Sunnyside, Edinburgh, EH7 5RA (“ the Applicant’s Representatives”)

Mr Ken Pocock, 15 (1F1) Learmonth Avenue, Edinburgh, EH4 1DG (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Melanie Booth (Ordinary Member)

Background

1. By application received between 11th September 2024 and 5th November 2024 (“the Application”), the Applicant’s Representatives applied to the Tribunal for an Order for eviction and possession of the Property.

2. The Application comprised the following:

I. Application form in the tribunal chamber’s standard template indicating on the cover page that the application was made under Rule 66, and at

Section 5, the substantive part of the form, stating that the application was made under Rule 65 and Grounds 11 and 12 of the 1988 Act;

II. Copy short assured tenancy agreement between the Parties dated 25 February 2015 at a monthly rent of £945.00;

III. Copy Notice to Quit purporting to terminate the tenancy with proof of service on the Respondent;

IV. Copy valid AT6 Notice in terms of Section 18 (6) of the 1988 Act with proof of service on the Respondent;

V. Copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Edinburgh City Council being the relevant local authority;

VI. Copy rent statement dating from 21st January 2022 to 25th February 2024 showing monthly rent payable ranging from £965.00 to £1,015.00 and then to £1,045.45 and showing rent arrears amounting to £7,639.05 due to 24 March 2024;

VII. Copy rent increase notice dated 1 April 2023, increasing the rent to £1,045.45 as at 25 June 2023;

VIII. Copy rent increase notice dated 2nd April 2024, increasing the rent to £1,170.90 as at 25 June 2024;

IX. Copy Correspondence from the Applicant's Representatives to the Respondent in terms of the pre-action requirements.

Case Management Discussion (CMD)

3. A CMD took place on 11 July 2025 at 14.00 by telephone. The Applicant was not present and was represented by Mr. J. Sloane of the Applicants Representatives, DJ Alexander. The Respondent, Mr. Pocock, was present and was not represented.

4. At the CMD, the Tribunal dealt with a preliminary matter in respect of the validity of the Notice to Quit and advised the Parties, that although the Notice to Quit which accompanied the Application was not valid as it did not conform to an ish date and did not give sufficient notice, as the tenancy agreement incorporated Section 18(6) of the Act , a valid Notice to Quit was not necessary.

5. The Tribunal then heard from the Parties in respect of the grounds for the Application and in respect of their respective circumstances.
6. For the Applicant, Mr. Sloane stated that Mr. Pocock had been in arrears for several years and had not adhered to payment plans. In respect of the Applicant's position, he advised that the Applicant does not have a portfolio of rental properties.
7. With regard to the rent statement, Mr. Sloane explained that this was incomplete as he did not have access to earlier records.
8. Mr. Pocock advised the Tribunal that he had worked as a care worker, had traded in foreign exchange currency and had subsidised his income from his capital and savings. He explained that he has had mental health issues with depression and brain fog. Mr. Pocock sought "a grace period" to apply for Universal Credit and assured the Tribunal that he hoped to source substantial funds within three weeks to a month to make payment towards the arrears. Mr. Pocock advised that he had not contacted the local authority for assistance with alternative accommodation. Mr. Pocock confirmed that he lives alone, has no children or dependents and has no other difficulties.
9. The outcome of the CMD was that as the Tribunal did not consider that it had sufficient evidence or factual information to make an Order, the CMD was adjourned to a further CMD. The Tribunal issued a Direction in respect of the information required being a complete and update rent statement together with rent increase notices and evidence of the payment plans from the Applicant and evidence that Mr. Pocock had made both an application to Edinburgh City Council for alternative accommodation and an application for Universal Credit. The Tribunal set a time limit of 26 September 2025 for compliance with the Direction.
10. The Applicant's Representatives complied with the Direction on 15 October 2025. Mr. Pocock did not comply with the Direction.

Adjourned CMD

11. The adjourned CMD took place on 17 October 2025 at 10.00 by telephone.

The Applicant was not present and was represented by Mr. J. Sloane of the Applicants Representatives. The Respondent, Mr. Pocock, was present and was not represented.

12. With regard to the Direction, Mr. Sloane explained that he had not complied in time as he had to recover records from an older computer system. Mr. Pocock stated that he had not complied with the Direction as he been pre-occupied with trying to progress his foreign exchange business.

13. With regard to the substantive matters, Mr. Sloane stated that the rent arrears and continued to rise and now totalled over £23,000.00. He stated that the Applicant had recently received a common repairs bill of around £7,000.00 for the Property.

14. Mr. Pocock accepted that he had not made the payments as promised at the earlier CMD and that his circumstances had not changed since then. In answer to questions from the Tribunal, he stated that he had not contacted Edinburgh City Council for alternative accommodation. Mr. Pocock advised that he is now in receipt of Universal Credit. He confirmed that he receives a housing benefit element and confirmed that he has not passed this on to the Applicant or her representatives but has used this for routine expenses.

Issues for the Tribunal

15. The Application not being opposed, the issue for the Tribunal was whether or not it should grant an Order for eviction as set out in the Application.

Findings in Fact

16. From the Application and the CMDs, the Tribunal made the following findings in fact: -

- i) There is a short assured tenancy of the Property between the Parties;

- ii) The Applicant has evidenced rent arrears of £23,042.90 accrued over around 3 years;
- iii) The Respondent has failed to make payment of the rent due and has failed to make consistent payments towards the arrears;
- iv) The Applicant does not have a portfolio of other rental properties;
- v) The Respondent remains residing in the Property;
- vi) The Respondent has no dependents who reside with him;
- vii) The Respondent is in receipt of Universal Credit, including the housing element of Universal Credit which was not passed to the landlord.

Decision and Reasons for Decision

17. The Tribunal had regard to all the information before it and to its Findings in Fact.
18. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal *“may do anything at a case management discussionincluding making a decision”*. The Tribunal took the view that it had sufficient information to make a decision and so proceeded to determine the Application.
19. The statutory ground and procedure being established, and the Application not being opposed, the issue for the Tribunal was to determine if it is reasonable to grant the Order.
20. The Tribunal then had regard to the circumstances of the Parties.
21. The Tribunal must establish, consider and properly weigh the “whole of the circumstances in which the application made” (Barclay v Hannah 1947 S.C. 245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.
22. The Tribunal then looked to balance the rights and interests of both parties.

23. The Tribunal accepted that the level of rent arrears and the lack of payments by Mr. Pocock is having a significant financial impact on the Applicant, Ms. Boyd, and has done so for some considerable time.

24. The Tribunal noted that Mr. Pocock has made little attempt to reduce the arrears or to make payment of the monthly rent. The Tribunal noted that he has deliberately retained the housing benefit element of his Universal Credit payment for his own use and took the view that he has behaved in a dishonest and reprehensible manner. The Tribunal noted further that, in spite of the Tribunal allowing him an opportunity to contact Edinburgh City Council for alternative accommodation, Mr. Pocock simply did not do so.

25. Accordingly, the Tribunal took the view that continuing the tenancy was not tenable or in the interests of either Party, and so, was satisfied that it is reasonable to issue an eviction order.

26. This decision is 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.

Karen Moore

Legal Member/Chair

Date: 17th of October 2025