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 11 of the Rent (Scotland) Act 1984

Chamber Ref: FTS/HPC/EV/25/2041

Re: Property at Midfearn Farm Cottage, Easter Fearn, Near Ardgay, Highland, IV24 3DL ("the Property")

Parties:

Mr John Brooke, Midfearn Estate, Easter Fearn, Near Ardgay, Highland, IV24 3DL ("the Applicant")

Mrs Romina McNeil, Midfearn Farm Cottage, Easter Fearn, Near Ardgay, Highland, IV24 3DL ("the Respondent")

Tribunal Members:

Andrew Upton (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an eviction order should be granted.

Findings in Fact

1. The Applicant is the landlord and the Respondent the tenant of the Property under and in terms of a Protected Tenancy under the Rent (Scotland) Act 1984.

2. The Respondent is 65 years old. She has lived in the Property for over 40 years.

3. The Property is a two bedroom cottage.

4. In January 2025 a water pipe within the void between the ground and first floors of the Property froze, burst, thawed, and thereafter caused significant water damage to the Property.

5. In January 2025 the Respondent was heating her bedroom of the Property using an oil-fired electric heater and an electric convection heater. She did not use the heating system for the Property.

6. The water pipe froze because the Respondent failed to adequately heat the Property.

7. Due to the water damage the Property is not tenantable or habitable.

8. The necessary repairs to the Property will cost in the region of £75,000.

9. The relationship between the Parties has irreparably broken down.

Findings in Fact and Law

1. The Respondent caused the condition of the Property to deteriorate by her negligence or default, and Case 3 of Part I of Schedule 2 to the Rent (Scotland) Act 1984 applies.

2. It is reasonable to grant the eviction order.

Statement of Reasons

Introduction

1. This Application called for a Hearing by video conference on 14 May, 7 and 21 August 2026. The Applicant was represented by Mr Dunlop, advocate. The Respondent was represented by Mr Ghosh K.C.

2. In this Application the Applicant seeks an eviction order. It is a matter of agreement between the parties that the Applicant is the landlord and the Respondent the tenant of the Property under a protected tenancy within the meaning of section 1 of the Rent (Scotland) Act 1984 ("the 1984 Act"). The Respondent has been the tenant of the Property for approximately forty years. The Applicant's father was the original landlord under the tenancy and, following his death, the Applicant has succeeded to the role.

3. These proceedings principally arise out of an escape of water at the Property in January 2025. There is no dispute that water pipes in the Property froze, causing the pipes to burst, and thereafter thawed causing significant water damage. The Applicant contends that the Respondent failed to adequately heat the Property and thereby caused the pipes to freeze and then burst. On that basis, the Respondent contends that both Case 1 and Case 3 of Part 1 of Schedule 2 to the 1984 Act apply and the Respondent should be evicted. The Respondent contends that there was inadequate provision for heating the Property.

The Legislation

4. The 1984 Act is in the following terms:-

"1.— Protected tenancies.

(1) A tenancy under which a dwelling-house (which may be a house or part of a house) is let as a separate dwelling is a protected tenancy for the purposes of this Act unless—

(a) the rateable value of the dwelling-house on the appropriate day exceeded or, as the case may be, exceeds £200, or in the case of a dwelling-house comprising or forming part of lands and heritages for which a rateable value is or was first shown on the valuation roll on or after 1st April 1978, £600; or

(b) the tenancy is one with respect to which section 2 below otherwise provides; or

(c) by virtue of section 4 or 5 below, the tenancy is for the time being precluded from being a protected tenancy by reason of the body or entity in whom the landlord's interest is vested; or

(d) by virtue of section 6 below, the tenancy has at all times since it was granted been precluded from being a protected tenancy;

and any reference to a protected tenant shall be construed accordingly.

(2) In relation to dwelling-houses comprising or forming part of lands and heritages for which a rateable value is or was first shown on the valuation roll on or after 1st April 1978, the Secretary of State may by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament increase the said sum of £600 in subsection (1) above, and he may make different provision for different classes of case.

(3) For the purposes of this Act, any land or premises let together with a dwelling-house shall, unless it consists of agricultural land exceeding two acres in extent, be treated as part of the dwelling-house.

(4) If any question arises in any proceedings whether a dwelling-house is within the limit of rateable value in subsection (1)(a) above, it shall be deemed to be within that limit unless the contrary is shown.

[…]

11.— Grounds for possession of certain dwelling-houses.

(1) Subject to the following provisions of this Part of this Act, the First-tier Tribunal shall not make an order for possession of a dwelling-house which is for the time being let on a protected tenancy or subject to a statutory tenancy unless the Tribunal considers it reasonable to make such an order and either—

(a) the Tribunal is satisfied that suitable alternative accommodation is available for the tenant or will be available for him when the order in question takes effect, or

(b) the circumstances are as specified in any of the Cases in Part I or II of Schedule 2 to this Act.

(3) The provisions of Part III of Schedule 2 to this Act shall have effect in relation to Case 8 in that Schedule and for determining the relevant date for the purposes of the Cases in Part II of that Schedule.

(4) The provisions of Part IV of Schedule 2 to this Act shall have effect for determining whether, for the purposes of subsection (1)(a) above, suitable alternative accommodation is or will be available for a tenant.

[…]

23.— Prohibition of eviction without due process of law.

(1) Where any premises have been let as a dwelling under a tenancy which is not a statutorily protected tenancy within the meaning of this Part of this Act or a right of a kind to which Part VII of this Act applies to use a dwelling-house has been granted before or after the commencement of this Act and—

(a) the tenancy or, as the case may be, the right to use (in this Part of this Act referred to as the former tenancy) has come to an end; but

(b) the occupier continues to reside in the premises or part of them;

subject to section 23A, it shall not be lawful for the owner to enforce against the occupier, otherwise than by proceedings in the First-tier Tribunal, his right to recover possession of the premises.

(2) For the purposes of this Part of this Act a person who, under the terms of his employment, had exclusive possession of any premises otherwise than as a tenant shall be deemed to have been a tenant and the expressions *"let"* and *"tenancy"* shall be construed accordingly.

(2A) Subsections (1) and (2) above apply in relation to any premises occupied (whether exclusively or not) as a dwelling other than under a tenancy as they apply in relation to premises let as a dwelling under a tenancy, and in those subsections the expressions *"let"* and *"tenancy"* shall be construed accordingly."

(3) In this Part of this Act *"the owner"*, in relation to any premises, means the person who, as against the occupier, is entitled to possession thereof; and in this section *"the occupier"*, in relation to any premises, means any person lawfully residing in the premises or part of them at the termination of the former tenancy.

(4) The preceding provisions of this section shall, with the necessary modifications, apply where the owner's right to recover possession arises on the death of the tenant under a statutory tenancy.

(5) Nothing in this section shall be taken to affect any rule of law prohibiting the securing of possession otherwise than by due process of law.

[…]

112.— Minimum length of notice to quit.

(1) No notice by a landlord or a tenant to quit any premises let (whether before or after the commencement of this Act) as a dwelling-house shall be valid unless it is in writing and contains such information as may be prescribed and is given not less than four weeks before the date on which it is to take effect.

(2) In this section *"prescribed"* means prescribed by regulations made by the Secretary of State by statutory instrument, and a statutory instrument containing any such regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) Regulations under this section may make different provision in relation to different descriptions of lettings and different circumstances.

[…]

Schedule 2, Case 1

Where any rent lawfully due from the tenant has not been paid, or any obligation of the protected or statutory tenancy which arises under this Act, or—

(a) in the case of a protected tenancy, any other obligation of the tenancy, in so far as it is consistent with the provisions of Part II of this Act, or

(b) in the case of a statutory tenancy, any other obligation of the previous protected tenancy which is applicable to the statutory tenancy,

has been broken or not performed.

In determining whether any rent lawfully due from a tenant has been paid in any case where the rent is payable in advance, any sums paid by the tenant in satisfaction of a decree or decrees for rent and expenses shall, if the action in which any such decree was obtained was raised before the expiry of the period in respect of which the rent sued for was due, be imputed wholly to rent and not to expenses.

[…]

Schedule 2, Case 3

Where the condition of the dwelling-house has, in the opinion of the First-tier Tribunal , deteriorated owing to acts of waste by, or the neglect or default of, the tenant or any person residing or lodging with him or any sub-tenant of his and, in the case of any act of waste by, or the neglect or default of, a person lodging with the tenant or a sub-tenant of his, where the First-tier Tribunal is satisfied that the tenant has not, before the making of the order in question, taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant, as the case may be."

<u>The Evidence</u>

5. The Applicant led evidence from four witnesses: (i) John West Brooke (the Applicant); (ii) Edgar Wylie; (iii) Tanya Elizabeth Brooke; and (iv) David Campbell. The Respondent gave evidence and had no other witnesses.

Witness statements were used in lieu of evidence in chief for all of the witnesses. Those statements are with the Tribunal papers. All of the witnesses adopted their statements as their evidence.

John West Brooke

6. In his evidence, the Applicant spoke of his familiarity with the Property. He clarified that the Property is known as both “Midfearn Farm Cottage” and “Easter Fearn Farm Cottage”. He spoke to being told by his late father, Charles Brooke, about his interactions with the Respondent, including works to install a new kitchen at the Property. He spoke to a previous decision of the Private Rented Housing Panel (as it then was) which spoke of the Respondent failing to heat the Property properly. He spoke to a number of photographs of the Property taken by Shirley McNeil in January 2025 and the condition they showed.

7. The Applicant spoke about the burst pipes in January 2025. He spoke about attendance at the Property by a loss adjuster instructed by his insurers and the insurer’s refusal of indemnity. He spoke of there being somewhere in the region of £75,000 worth of damage to the Property. His understanding was that the pipes had frozen because the Property was not being properly heated; the downstairs area in particular. He spoke of the farm manager having found that the Respondent was using a small electric heater in an upstairs bedroom but no other means of heating the Property appeared to be being used. His understanding was that the failure to heat the Property had caused the pipes to freeze and thereafter burst. That was the Respondent’s fault.

8. The Applicant spoke separately to alleged examples of erratic and volatile behaviour by the Respondent generally towards his father, contractors attending site and neighbours. He described her as aggressive and intimidating. When put to him that the Respondent was of diminutive stature such that any allegation that she was intimidating was invented, Mr Brooke was firm in his view that the Respondent’s demeanour was aggressive and intimidating, and that size was not the measure of a person’s ability to intimidate.

9. The Applicant spoke of the decision to give notice to quit to the Respondent being purely financially motivated. He had not yet decided what he would do with the Property after he had recovered it. The cost of repair is significant and he may delay undertaking works.

Edgar Wylie

10. Mr Wylie is a neighbour of the Respondent. For the most part, Mr Wylie spoke about stories he had been told about the Respondent by others and a perception of fear about her. However, he was also clear that he had experienced no personal issues with her.

11. Beyond that, Mr Wylie spoke of never seeing smoke coming from the chimney at the Property.

Tanya Elizabeth Brooke

12. Mrs Brooke is the wife of the late Charles Brooke and mother of the Applicant. She spoke of being told over a period of years by her late husband about his challenging interactions with the Respondent. However, she was not personally involved in the letting of the Property and had not dealt with the Respondent directly.

David Campbell

13. Mr Campbell is a Chartered Surveyor. He has been a rural surveyor for nearly 20 years. He is now the principal of Land Consultancy Services Ltd.

14. Mr Campbell spoke of historic discussions he had had with the late Charles Brooke about his management of the Property. He spoke of being told by the late Mr Brooke about his difficult relationship with the Respondent, characterised by her often erratic behaviour.

15. He spoke of visiting the Property with the Applicant following the burst pipe incident. He spoke of seeing evidence of a lack of ventilation, evidence of moisture and evidence of decay in the Property. However, he could not comment on whether that evidence was of long-standing failure to take care of the Property or of the burst pipe. The inspection had happened a number of weeks after the pipe had burst, so the damage could have been a direct result of the escape of water in January 2025.

Romina McNeill (the Respondent)

16. The Respondent spoke of her longstanding tenancy at the Property. She generally refuted allegations that she had been aggressive, abusive or intimidating. She accepted that she had been aggressive to the late Charles Brooke on one occasion under explanation that he had broken into the Property without her consent. She denied having prevented access to the Property for surveyors or architects. She spoke of historic flooding issues at the Property. She denied failing to heat the Property. She spoke of there having been an issue with the thermostat for the heating system. She spoke of the stove serving the Property having failed but that she had arranged for its repair. She spoke of using an oil-fired electric radiator and an electric convection heater in her bedroom on the first floor of the Property.

Assessment

17. For the most part, the Tribunal found Mr Brooke to be credible and reliable when speaking to matters he was directly involved in. Insofar as Mr Brooke spoke of matters told to him by his late father, the Tribunal was satisfied that was an accurate retelling of what he had been told.

18. Insofar as Mr Brooke spoke of threatening or intimidating conduct of the Respondent, the Tribunal considered that evidence to be exaggerated. The Tribunal found Ms McNeill to be somewhat gruff in her demeanour. She presented as a forthright lady, which is meant in no way disrespectfully. The Tribunal did not consider that demeanour to be aggressive in the sense of presenting a risk of harm, nor did it consider that any person encountering Ms McNeill would form that opinion. She does not give the impression of being one who is shy to let her feelings on a topic be known or to mince her words when doing so. The Tribunal did not doubt that she engaged in frank and robust discussions with Mr Brooke, his late father, and other contractors attending the Property. However, the Tribunal was not satisfied that she caused genuine fear or alarm to any of those persons.

19. The Tribunal did not find the evidence of Mr Wylie or Mrs Brooke to be of any real assistance. They spoke of matters which they had been told by others and were focused principally on the behaviour of the Respondent. The Tribunal did not doubt the credibility of either witness, but the evidence was second hand, unreliable, and largely irrelevant to the case.

20. The Tribunal found Mr Campbell to be credible and reliable. He had visited the Property. His evidence as to its condition and the cause thereof was fair and measured.

21. The Tribunal found the Respondent to be generally credible, in that the Tribunal does not doubt that her evidence was honestly and genuinely given. However, the Tribunal did not find the Respondent to be reliable insofar as it related to the adequacy of her actions to heat the Property on the eve of the burst pipe. The fact that the pipe froze within the main body of the house, and in the void between the ground and first floors, is itself indicative of a lack of heating. That she required to use both an oil-fired electric radiator and an electric connection heater in her bedroom also speaks to the ambient temperature elsewhere in the Property being too low. She might have felt that the measures she took were adequate, but that is inconsistent with what happened.

Submissions

22. Both parties lodged detailed written submissions. Those are with the Tribunal papers and were adopted by counsel.

23. The Applicant’s submission was that the Respondent owed an obligation, implied by the common law, to take reasonable care of the Property. She has failed to do so by, in particular, failure to properly heat the Property both immediately prior to the pipes freezing in January 2025 and generally. That is sufficient to establish Case 1. In any event, the Respondent has allowed the Property to deteriorate by her neglect or default. That is sufficient for Case 3 to be established. Having regard to the condition of the property, the costs associated with necessary repairs and the difficult relationship between the parties, it was reasonable to grant the eviction order.

24. The Respondent's submission was that the notice served by the Applicant asserting Cases 1 and 3 was lacking sufficient detail to inform the Respondent what she needed to do to remedy her breaches. It was therefore invalid. Insofar as the Applicant asserted a breach of some implied duty to take reasonable care, its pleadings were insufficient to give fair notice of what that implied duty was and how it arose. In that respect, Case 1 must fail. On the evidence generally, the Respondent's evidence is to be preferred where it conflicts with the Applicant's witnesses. The evidence that the Respondent was threatening or intimidating to others was inadequate and, in any event, lacked credibility given the Respondent's diminutive stature. There was a lack of evidence that the damage to the Property had been caused by the Respondent's failure. Where the Respondent gave an answer to a question but was not pushed to explain that answer, her reliability could not be impugned (*Chen v Ng*, [2017] UKPC 27).

Decision

25. Certain of the issues raised by the parties in submissions can be dealt with in short order. Firstly, the Respondent's challenge to the adequacy of the Applicant's pleadings for Case 1 only becomes relevant if the Applicant fails to establish Case 3. The Tribunal therefore determined that it was appropriate to reach a decision on whether Case 3 was established before considering Case 1.

26. Secondly, the Respondent's challenge to the adequacy of the notice to quit is not a relevant defence in these proceedings. The 1984 Act does not require that a landlord gives notice to a tenant of the basis upon which eviction is being sought. That contrasts against subsequent legislation in the Private Rented Sector which makes the giving of such notice a requirement: in particular, sections 18(2), 19(1) and 33(1)(d) of the Housing (Scotland) Act 1988, and 52 of the Private Housing (Tenancies) (Scotland) Act 2016. All that is required for section 11(1)(b) of the 1984 Act is that a Case in Part I or II of the Schedule is established and that it is reasonable to evict.

27. Thirdly, the decision in *Chen* is of limited assistance in this case. *Chen* concerned, in part, the propriety of Mr Ng's evidence incredible based on the general rule, as set out by Lord Neuberger at paragraph 53, that "where it is not made clear during (or before) a trial that the evidence, or a significant aspect of the evidence, of a witness (especially if he is a party in the proceedings) is challenged as inaccurate, it is not appropriate, at least in the absence of further relevant facts, for the evidence then to be challenged in closing speeches or in the subsequent judgment". In essence, the Privy Council held that evidence ought not to be held incredible on a ground that was not put to the witness because the witness might have an answer to such a proposition (*Chen*, at paragraph 61).

28. However, in the case at instance, that was not an issue. The Tribunal's decision was not based on the Respondent's lack of credibility, but rather the lack of reliability.

29. What remains then is to determine whether the Respondent caused the condition of the Property to deteriorate by her acts of waste, or neglect or default and, if so, whether it is reasonable to grant the eviction order. In respect of the first of those, the Tribunal unanimously determined that she had.

30. This action arises out of significant damage having been caused to the Property by an escape of water. That escape of water was caused by a pipe in the void between the ground and first floors having frozen, burst and thawed. One cannot escape the obvious. In order to freeze, the pipe must have been subjected to freezing temperatures. Had the Property been adequately heated then the pipe would not have been so subjected. The pipe was in the middle of the Property. It ought to have had the benefit of ambient heat from both below and above. It evidently did not. The responsibility for heating the Property was the Respondent's. Had she done so adequately then the pipe would not have frozen. We are left with one inevitable conclusion: the Respondent, through her negligence or, at least, her failure to make use of the heating provision in the Property, caused the pipe to burst and the damage that ensued.

31. That conclusion is sufficient to establish Case 3. The Tribunal accordingly does not require to determine whether Case 1 exists. The final issue to determine is whether it is reasonable to grant the eviction order.

32. The test of reasonableness is set out in the English authority of *Cumming v Danson*, [1942] 2 All ER 653. At page 655, Lord Greene MR said:

> "[I] considering reasonableness… it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad commonsense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some facts may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account."

33. In this case, the Tribunal had regard to the Respondent's circumstances. She is 65 years old. She has lived in the Property for over forty years. Moving to another property would be a huge ordeal for her. However, the Property is simply not tenantable in its current condition. The works required to put the Property into tenantable condition are very expensive. The Applicant cannot be compelled to carry out those works standing the Tribunal's determination that the Respondent was responsible for the damage, and therefore any order allowing the Respondent to remain would necessarily require her to live in relative squaller. The local authority has a duty to rehouse the Respondent.

That would not be appropriate. Additionally, regardless of whether complaints about the Respondent's behaviour were well made, it was evident that parties simply do not get on. The Applicant does not wish to continue in a letting relationship with the Respondent. The Tribunal did not consider it was in either party's interests to force that relationship to continue.

34. For those reasons, the Tribunal unanimously determined that it was reasonable to grant the 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.

Andrew Upton

_____ _____

Legal Member/Chair **Date: 20/10/2026**