

**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) under Section 18 &19 of the Housing (Scotland) Act 1988 ("the Act")**

**Chamber Ref: FTS/HPC/EV/18/0623**

**Re: Property at 19 (PF1) Parkhead Drive, EDINBURGH, EH11 4SR ("the Property")**

**Parties:**

**Mr Norman Lewis, Mrs Annette Lewis, 124 South Gyle Gardens, EDINBURGH, EH12 7RZ ("the Applicant")**

**McEwan Fraser Legal, Claremont House, 130 East Claremont Street, Edinburgh ("the Applicant Representative")**

**Mr Craig McKenzie, Ms Rhona McKenzie, 19 (PF1) Parkhead Drive, EDINBURGH, EH11 4SR ("the Respondent")**

**Tribunal Members:**

**Susan Christie (Legal Member)**

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

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

**Background**

1. The Application for recovery of possession of the Property was received by the Tribunal on 16 March 2018. A Notice of Acceptance of the Application by the Tribunal, made under Rule 9 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 as amended ("the Rules"), is dated 20 March 2018.
2. The application type is stated to be made under Rule 65 (assured tenancy possession). It relies on Grounds 11, 12 13 and 14 of Schedule 5 of the Act.

## Case Management Discussion

3. A Case Management Discussion ("CMD") was scheduled for 11 May 2018 at 2pm within George House, 126 George Street, Edinburgh, EH2 4HH.
4. Mr Jamie Miller of the Applicant Representative was in attendance. The Respondent was not in attendance but had telephoned the Tribunal to advise they had bereavement and would not be able to attend the CMD that day.
5. The CMD proceeded in the Respondent's absence and discussion took place around issues the Tribunal wished clarified. A Note was produced as a result which stated:

### "Summary of Discussion

Mr Jamie Millar of McEwan Legal, appeared on behalf of the Applicants as their representative. The Respondents did not attend but had telephone the Tribunal offices to advise they had bereavement and would not be able to attend the Case Management Discussion (CMD) today.

After introductions the legal member advised Mr Millar that there were a number of issues the Tribunal would like clarified:-

1. The Tribunal enquired if there was a signed lease. Mr Millar advised there should be and advised he could produce it if required.
2. Mr Millar advised that the Notice to Quit included in the papers dated 26th August 2016 was included in error and was not being relied upon.
3. The Tribunal enquired as to the grounds of termination of the contractual tenancy as the Notice to Quit dated 5th October requires the Respondents to leave by 15th November 2017 but this is not an ish date. The lease refers to an end date of 30th November 2016 and if not terminated at that date continues on a monthly basis with either party giving the other at least two months' notice any month thereafter on the anniversary of the lease end date. Notice has not been given at the anniversary of the End date (the ish) nor has two months' notice been given. The Tribunal would like to be addressed on whether, and if so how, the contractual tenancy has been ended and what legal basis the Applicant is relying on to use S18 of the Act. It is noted that the grounds relied on by the Applicant in Schedule 5 of the Act are not mentioned in the lease and therefore S18 (6) cannot be relied upon. It is noted that the Applicants have served a 819 notice (AT6 notice) and have given 14 days' notice of their intention to raise proceedings.
4. The statement of rent does not identify sufficiently the sums paid by the Council in housing benefit for the Property. It is noted that the sums paid by the Council apply to two properties the Applicants own. The Tribunal would like to see a rent statement clearly showing the rent due

from the date of commencement of the lease, the sums paid towards that rent either by the Council or the Respondents and a balance due each month.

5. The Applicant's representative provided at the CMD a copy of a sheriff officer's e-mail dated 8th March 2018 in support of his clients claim for recovery of possession under Grounds 13 and 14 of Schedule 5 to the Act. It is noted that the respondents have not seen this or had an opportunity to comment on it. This will need to be intimated on the Respondents.

6. In view of the need for clarification on the above matters and the fact the respondents were unable to attend due to a bereavement the Tribunal felt it appropriate to continue the application to another CMD at a time to be arranged.

7. Mr Millar asked that, due to the condition of the Property, the CMD could be arranged as soon as possible.

The following is required to be lodged by the Applicant at least 2 weeks before the next CMD:-

1. A copy of the signed lease (if possible).
2. An up dated rent statement showing in detail the sums due and paid for this Property only. A copy of this should be sent also to the Respondents.

3. Legal submissions regarding the termination of the contractual tenancy and the Applicant's right to invoke S18 of the Act.

In addition the Tribunal will send a copy of the e-mail from the sheriff officers to the Respondent.

The Respondents are advised that they should attend the next CMD and that if they fail to do so the Tribunal may make an order in their absence if satisfied there are grounds to do so.

Adjourned proceeding to further case management discussion."

6. Intimation of the new date scheduled for the CMD and accompanying Note was made on all Parties on 14 May 2018 by 'signed for' post.
7. On 18 June 2018 the Parties were further written to intimating the date assigned for the adjourned CMD being 18 July 2018 at 2pm within George House Room D10, 126 George Street, Edinburgh, EH2 4HH and in addition: invited the Applicant Representative to make written representations by 6 July 2018; asking the Respondent to provide a preferred correspondence address and e mail address; and intimated that they are required to attend, that a decision may be made in their absence if they do not attend which can include the making or refusing of an eviction order.
8. On 12 July 2018 Parties were written to by the Tribunal intimating the time for a response had now passed and re-iterating the day, time and venue of the next CMD.
9. On 17 July 2018 the Applicant Representative sent into the Tribunal a Statement of Rent.

## **The Adjourned Case Management Discussion**

10. A second Case Management Discussion ("CMD") was scheduled for 18 July 2018 at 2pm within George House Room D10, 126 George Street, Edinburgh, EH2 4HH.
11. Ms Sarah Jordan, solicitor, of the Applicant Representative was in attendance. The Respondent was not in attendance.
12. The Tribunal office received a telephone call from the Respondent Rhona McKenzie that she would not be attending today's CMD as "they are recovering from medical treatment".
13. I was satisfied that proper intimation of the CMD had been made on both Respondents and I proceeded.
14. The documents lodged in support of the application were examined in some detail and discussed.
15. The Minute of Lease between the Parties produced is unsigned and undated. It gives an initial term of 10am on 1 June 2016 until 30 November 2016 and "if either the Landlord or the Tenant is desirous of not renewing the tenancy, he shall be required to give the other two months' notice in writing prior to termination. If neither party brings the lease to an end on the end date above the lease will continue on a monthly basis with either party giving the other at least two months' notice any month thereafter on the anniversary of the lease end date".
16. The Notice to Quit produced was dated 5 October 2017 and required the Respondent to remove from the Property by 15 November 2017. It was served by Sheriff Officer on the Respondent on 5 October 2017. At the same time a Form AT6 was served and a section 33 Notice. The Notice to Quit is defective. It does not coincide with a finish date, nor has the required period of notice been given in terms of the lease.
17. The AT6 served on the Respondent on the same date by Sheriff Officer is also defective. The Grounds for Recovery have been inserted and span over Parts 2 & 3 instead of being inserted in Part 2. Part 3 has no narrative of reasons for each of the Grounds referred to and therefore the required information has not been given to the tenant. The Notice is dated 5 October 2017 and was served on that date. It states proceedings will not be raised before 19 October 2017. Two weeks clear notice has not been given.
18. The Minute of Lease does not have within it an irritancy clause which sufficiently reproduces the Grounds relied on in this Application-11, 12, 13, and 14. In clause Seventeen it simply states: "The foregoing provisions of this clause are without prejudice to the Landlord's right to terminate this lease under section 18 or section 33 of the 1988 Act."

## **Findings in Fact**

- I. The Parties entered into an assured tenancy which continued by tacit relocation on 30<sup>th</sup> of each month.
- II. The Notice to Quit dated 5 October 2017 is not a valid one.

- III. The contractual tenancy between the Parties continues by tacit relocation.
- IV. The AT6 Notice (section 19 of the Act) is defective in its terms and did not give the Respondent two weeks clear notice. Accordingly, section 19 ss (1) and (4) of the Act have not been satisfied.

### **Finding in Fact and Law**

- V. The Applicant is not entitled to recover possession of the Property from the Respondent, the requirements contained in sections 18 & 19 of the Act having not been complied with or satisfied.  
The Application for recovery of possession of the Property dated 16 March 2018 is accordingly refused.

### **Reasons for Decision & Decision**

- 19. I was satisfied that a decision could be made today on the Application as there was sufficient material before me to do so and I was satisfied the procedure was fair. I also had regard to the overriding objective.
- 20. I was satisfied that the contractual tenancy between the Parties was a continuing one that had not been brought to an end, as yet, by the service of a valid Notice to Quit.
- 21. I considered the AT6, section 19 Notice, to be defective and it had not been served in time for the minimum period of notice to be given to the Respondent tenant.
- 22. The Minute of Lease presented as the lease between the Parties does not have within it an irritancy clause which sufficiently reproduces the Grounds relied on in this Application-11, 12, 13, and 14(section 18(6) of the Act).
- 23. The terms of sections 18 & 19 of the Act require me not to make an Order for possession of a house let on an assured tenancy unless the provisions and conditions required in those sections are met (in addition to section 19A). Those provisions have not been met and I must refuse the current application.

### **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.**

**Susan Christie**

**Legal Member/Chair**

**18 July 2018**

**Date**