



**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/20/1334

**Re: Property at 17A West Main Street, Uphall, Broxburn, EH52 5DN (“the
Property”)**

Parties:

**Mr Bruce Johnston, 19 Curran Crescent, Broxburn, West Lothian, EH52 5RY
 (“the Applicant”)**

**Mr Graham Lindsay, 17a West Main Street, Uphall, Broxburn, EH52 5DN (“the
Respondent”)**

Tribunal Members:

Richard Mill (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an Order for Possession be granted against the
respondent under Ground 8 of Schedule 5 of the Housing (Scotland) Act 1988**

Introduction

This is an application under Rule 65 and Section 18 of the Housing (Scotland) Act 1988. An order for possession is sought.

The applicant’s agents letter to the Tribunal, at the time of lodging, suggested that this was an application under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016. That is incorrect. Such an application would relate to a private residential tenancy. The lease agreement entered into between the parties is an assured tenancy which is said to have commenced on 23 June 2017. Ground 8, Schedule 5, of the 1988 Act is relied upon – namely that both of the date of the service of the notice under Section 19 of the Act relating to the proceedings for possession and at the date of the hearing at least 3 months’ rent is lawfully due from the tenant.

Following clarification with the applicant's agent it was accepted that the tenancy is not a private residential tenancy and the application falls under Rule 65 as it relates to an assured tenancy.

In the applicant's agents submissions to the Tribunal at that time (by way of letter dated 16 March 2020) it was stated that there is no written tenancy agreement.

The submissions lodged with the application assert that the respondent has occupied by the property as his only and principal home.

The following documents were lodged with the application:-

- (i) A copy of a letter dated 17 September 2019 issued to the respondent which is in the form of a notice to quit. This required the respondent to remove from the property as at 23 November 2019.
- (ii) A copy of an AT6 / Notice under section 19 of the Act advising of the intention to raise proceedings on the basis of both Ground 8 and Ground 11 of Schedule 5 of the 1988 Act advising that proceedings would not be raised before 23 November 2019.

The tenancy said to have been created between the parties was a short assured tenancy. The relevant AT5 which would have been required to have been provided to the respondent in advance of the tenancy being created and, indeed, a copy of the tenancy agreement itself had not been produced. In the circumstances no reliance is placed upon Section 33 of the Act for the purposes of recovery of possession.

The application and intimation of the Case Management Discussion (CMD) to take place at 2.00 pm on 28 October 2020 was effected upon the respondent by Sheriff Officer delivery on 19 September 2020. No response or written submissions were received.

The Case Management Discussion (CMD) took place at 2.00 pm on 28 October 2020. The applicant was represented by James Morrison of Messrs Sneddon Morrison, solicitors. The respondent joined the hearing personally.

The respondent did not offer any opposition to the application for eviction. He stated that he wishes to leave the property and be rehoused. He requires an eviction order to produce to the Council to be rehoused. He accepted that he has not paid any rent since July 2019.

Findings and Reasons

The property is 17A West Main Street, Uphall, Broxburn EH52 5DN

The applicant is Mr Bruce Johnston. He is the landlord. The respondent is Mr Graham Lindsay. He is the tenant.

The tenancy between the parties was created on 23 June 2017. The tenancy between the parties is an assured tenancy under the Housing (Scotland) Act 1988. There is no written lease. The respondent has occupied the property as his only and principal home. He agreed to pay rent in the sum of £450 per month to occupy the property. He paid that rent for around 2 years and ceased making payments of rent in or about July 2019.

The relevant notice was served upon the respondent prior to the coming into force of the Coronavirus (Scotland) Act 2020. The notice period is not therefore subject to extension and mandatory Grounds for possession still apply.

The notice to quit was served upon the respondent providing more than two calendar months' notice of the applicant's wish to recover possession of the property based upon continuing arrears of rent. A valid notice in terms of Section 19 of the Act was served upon the respondent at that time. Notice to the Local Authority under Section 11 of the Homelessness (Scotland) Act 2003 has been made.

The applicant is entitled to an order for recovery of possession under Section 18 of the Housing (Scotland) Act 1988.

A mandatory ground has been established which is that contained within Ground 8 of Schedule 5 of the Act. As at the time of the section 19 Notice and at the date of the hearing at least three months' rent was lawfully due from the respondent. The failure to pay is not the consequence of a delay or failure in the payment of a relevant housing benefit.

The Tribunal relied upon the documentary evidence available, together with the submissions made on behalf of the applicant, none of which was challenged. This was all found to be credible and reliable.

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.

Richard Mill

28 October 2020

Legal Member/Chair

Date