

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/19/1563

Re: Property at G/2, 4 Smith Street, Dundee, DD3 8AZ (“the Property”)

Parties:

**Mr Michael Williamson, Mrs Katriona Williamson, c/o Pavillion Properties
Scotland Ltd, India Buildings, 86 Bell Street, Dundee, DD1 1HN (“the
Applicant”)**

Mr John Bertie, G/2, 4 Smith Street, Dundee, DD3 8AZ (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member)

Decision in absence of the Respondent

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for possession should be granted.**

- 1. The Case Management Discussion (CMD) took place at Dundee on 25 July 2019. Present was the Applicants’ Representative Mr Forsyth of Messrs Muir Myles Laverty. The Respondent was not present. The tribunal was satisfied that the Respondent had received sufficient and timely notification of the CMD as Sheriff Officers had confirmed service of the notification and documentation for the CMD on the Respondent on 14 June 2019.**
- 2. The application for an order for possession in terms of Rule 65 had been received by the Tribunal on 22 May 2019. The application was accompanied by a copy of the S11 notice, the AT6 dated 6 February 2019 with the earliest date of raising proceedings stated as 28 February 2019, service confirmation of the AT6 on the Respondent by Sheriff Officers on 8 February 2019, copy tenancy agreement for tenancy commencing 1 February 2017.**
- 3. At the hearing the Applicant’s representative confirmed that the application is made in terms of Rule 65 and the process under which the application is made is S 18 of the Housing (Scotland) Act 1988 and that the application for repossession**

relies on grounds 13 and 15 of Schedule 5 of the Housing (Scotland) Act 1988 (the 1988 Act).

4. He moved for an order on the basis there had been anti-social behaviour which his clients had described as complaints by neighbours of cannabis smell, behaviour of loud noise, kicking of doors, drug users coming and going from the property. There had been numerous complaints to the landlords about this behaviour. The expectation would be that these issues will persist as long as the Respondent holds the property.
5. With regard to the issue of whether or not the property has been abandoned the Applicants' representative was unable to provide any firm evidence. He stated that if Sheriff Officers were able to achieve service as stated in the Sheriff Officer's certificates of 8 February 2019 and 14 June 2019 and the Respondent still clearly had the keys and thus access to the property then it should be accepted that the Respondent had been properly served with these documents. He stated that the Applicants' were not insisting on pursuing the application on the ground of abandonment of the property or leaving the property unattended for more than 2 weeks as they had no firm evidence and Sheriff Officers had established that the Respondent was still residing at the property. All he could say is that there had been no contact from the tenant to them for months.
6. No correspondence had been received from the Respondent and he did not attend the CMD. No representations had been lodged. No contact was made by the Respondent to the Applicants prior to the CMD.

The documents are referred for their terms which are held to be incorporated herein.

Findings in Fact:

1. The property is let on a Short Assured Tenancy, which commenced on 1 February 2017.
2. The tenancy has not been terminated by a Notice to Quit.
3. The Respondent still has the keys and access to the property.
4. Sheriff Officers issued certificates on 8 February 2019 and 14 June 2019 indicating that the Respondent still resides at the address.
5. During the duration of the tenancy various complaints about drug users attending the property, loud noise, kicking of doors and a strong smell of Cannabis coming from the property had been made by neighbours to the Applicants.
6. The anti-social behaviour to neighbours and the strong smell of cannabis from the property is not disputed. The strong smell of cannabis coming from the property evidences use of illegal drugs in the property, whether by the tenant or visitors.
7. Loud noise and kicking doors at the property either by the tenant or visitors led to complaints from neighbours and constitutes acting in an anti-social manner to persons residing in the locality.
8. The AT6 document gives under part 3 as reasons Grounds 13 and 15 of the 1988 Act and explains in the notice that the breach of tenancy agreement relates among others to clauses 13.1 and 13.2 (x) of the tenancy agreement.
9. These state: "13.1: The tenant, those living with him, and his visitors must not harass or act in an anti-social manner to, or pursue a course of anti-social conduct against any person in the neighbourhood. Such people include residents, visitors, agents and contractors and those in the tenant's house.

- 13.2 (x) : In particular, the tenant, those living with him and his visitors must not use or sell unlawful drugs or sell alcohol.”
10. It further sets out with regard to Ground 15 that “the Tenant or anyone living with him has caused a nuisance or annoyance to neighbours or has been convicted of a moral or illegal use of the premises. The Tenant has been anti-social to neighbours who have also complained that there is a strong smell of cannabis coming from the property.”
 11. The tenancy agreement in Clause 20.4 sets out the grounds in Schedule 5 of the 1988 Act and in particular states: “Ground 13: Any obligation of the tenancy (other than the obligation to pay rent) has been broken by the tenant.” and “Ground 15: The tenant or anyone living with him has caused a nuisance or annoyance to neighbours or has been convicted of immoral or illegal use of the premises.”
 12. The AT6 document was served on the Respondent by Sheriff Officers on 8 February 2019.

Reasons for Decision:

Rule 18 of the Rules of Procedure states:

- 18.—(1) Subject to paragraph (2), the First-tier Tribunal—*
- (a) may make a decision without a hearing if the First-tier Tribunal considers that—*
 - (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and*
 - (ii) to do so will not be contrary to the interests of the parties; and*
 - (b) must make a decision without a hearing where the decision relates to—*
 - (i) correcting; or*
 - (ii) reviewing on a point of law,*
- a decision made by the First-tier Tribunal.*
- (2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.*

Given the information available to the Tribunal, which is undisputed, the Tribunal considered that it could make a decision in the case without a hearing. The Respondent had been advised of the date. He had not requested a postponement and not arranged representation. He had been advised the Tribunal may make a decision at the CMD.

1. In terms of S 18 (1) of the 1988 Act the tribunal “*shall not make an order for recovery of possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to the Act*”.
2. In terms of S 18 (6) of the 1988 Act “*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 of possession is ... any of the grounds in Part II of that Schedule other than ... Ground 15 ... and (b) the terms of the tenancy make provision for it to be brought to an end on the ground in question.*”
3. In terms of S 18 (6A) of the 1988 Act :”*Nothing in subsection (6) above affects the First –tier Tribunal’s power to 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, where the ground for possession in Ground 15 in Part II of Schedule 5 to this Act.”

4. Ground 13 of Schedule 5 Part II of the 1988 Act states: *“Any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed. “*
5. Ground 15 of Schedule 5 Part II of the 1988 Act states: *“The tenant, a person residing or lodging in the house with the tenant or a person visiting the house has— (a)been convicted of—(i)using or allowing the house to be used for immoral or illegal purposes; or (ii)an offence punishable by imprisonment committed in, or in the locality of, the house; or (b)acted in an anti-social manner in relation to a person residing, visiting or otherwise engaging in lawful activity in the locality; or (c)pursued a course of anti-social conduct in relation to such a person as is mentioned in head (b) above. In this Ground “anti-social”, in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance, “conduct” includes speech and a course of conduct must involve conduct on at least two occasions and “tenant” includes any one of joint tenant*
6. The tenancy agreement then sets out the Grounds narrated in Schedule 5 of the Housing (Scotland) Act 1988. Whilst these are not absolutely verbatim as it omits the words “or not performed” in Clause 20.4 Part 1 Ground 13, the Tribunal is satisfied that the ground as stated in the AT6 document in relation to Clause 13 of the tenancy agreement relates to an active breach of the terms and not a non performance of an obligation. Thus the tenancy agreement made provision for the tenancy being brought to an end on the ground in question as required with regard to Ground 13 of Schedule 5 Part II of the 1988 Act in S 18 (6) (b) of the 1988 Act. This ground can thus be considered although the contractual tenancy has not been terminated by a Notice to Quit.
7. S 18 (6A) of the 1988 Act dis-applies the provisions of S 18 (6) for orders of possession considered on the basis of Ground 15 of Schedule 5 Part II of the 1988 Act.
8. The tribunal then has to consider whether the Grounds 13 and 15 of Schedule 5 of the Act apply in this case. Both are discretionary grounds for possession Both grounds were stated in the AT6 document.
9. The Applicants’ representative elaborated on the description in the AT6 document and the application by providing information that the neighbours had complained to the Applicants of anti-social conduct and behaviour and stated that this was conduct in connection with drug misuse.
10. The facts of the case are not in dispute as the Respondent has made no representations and did not attend the CMD. The notification bundle to the Respondent included the clear warning “The Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision on the application which may involve making or refusing and eviction order or payment order”. The grounds of eviction were stated clearly

in the AT6 document, which in particular referred to the breach of the tenancy agreement in relation to drug use and the strong smell of cannabis coming from the property and having been complained about by neighbours.

11. The tribunal is satisfied Ground 13 of Schedule 5 of the Act applies in this case and, applying its discretion in the matter considers that taking into account all relevant matters it is fair in all the circumstances to grant the order for possession on that ground. The behaviour of the strong smell of cannabis complained about by the neighbours to the Applicants clearly indicates use of unlawful drugs in the property, which constitutes a breach of Clause 13.2 (x) of the tenancy agreement. The behaviour of loud noise and kicking doors reported also constitutes acting in an anti-social manner towards neighbours in terms of Clause 13.1 of the tenancy agreement. The anti-social behaviour and the smell of cannabis from the property indicating drug use in the property were not disputed by the Respondent and no representations were made as to why it would not be reasonable in these circumstances to grant the order on that ground.

12. The tribunal is satisfied Ground 15 of Schedule 5 of the Act applies in this case and, applying its discretion in the matter, considers that taking into account all relevant matters it is fair in all the circumstances to grant the order for possession on that ground. The evidence stated in the application is that there were complaints from neighbours about anti-social behaviour and about a strong cannabis smell coming from the property. The Tribunal accepted that use of drugs is likely to cause nuisance and annoyance to neighbours and complaints were made accordingly. Neighbours also complained about noise and kicking of doors which led to complaints. The anti-social behaviour and the smell of cannabis from the property indicating drug use in the property were not disputed by the Respondent and no representations were made as to why it would not be reasonable in these circumstances to grant the order on that ground.

Decision: The Tribunal grants the order for possession of the property

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.

Petra Hennig-McFatrige

Legal Member/Chair

 25.7.19

Date