



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 18(1) of the Housing
(Scotland) Act 1988**

Chamber Ref: FTS/HPC/EV/18/2040

**Re: Property at The Church of Scotland Manse, Inverinate, Kyle, IV40 8HE (“the
Property”)**

Parties:

**The Church of Scotland General Trustees, 121 George Street, Edinburgh, EH2
4YR (“the Applicant”)**

**Mr Andrew Peter Kearns, Mrs Lynne Kearns, The Church of Scotland Manse,
Inverinate, Kyle, IV40 8HE (“the Respondents”)**

Tribunal Members:

Alastair Houston (Legal Member)

Decision (in absence of the Respondents)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for possession of the Property be made in
favour of the Applicant.**

1. Background

- 1.1 This is an application for an order for possession in relation to a Property let on an assured tenancy. The application was accompanied by copies of the written offer of tenancy which contained the terms of the agreement between the parties, notices to quit together with Form AT6 and covering letter sent to each of the Respondents, a letter from the Presbytery of Locharron Skye and notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 which had been sent to Highland Council.
- 1.2 The order for possession was sought under Section 18 of the Housing (Scotland) Act 1988 (“the 1988 Act”). Sections 18(1) and (3) of the 1988 Act states:-

(1)The First-tier Tribunal shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act.....

(3)If the First-tier Tribunal is satisfied that any of the grounds in Part I of Schedule 5 to this Act is established then, subject to subsections (3A) and (6) below, the Tribunal shall make an order for possession.

The Form AT6 gave notice to the Respondents that an order for possession was being sought in terms of Ground 5 of Schedule 5 of the 1988 Act. The terms of Ground 5 are as follows:-

The house is held for the purpose of being available for occupation by a minister or a full-time lay missionary of any religious denomination as a residence from which to perform the duties of his office and—

(a)not later than the beginning of the tenancy the landlord (or, where there are joint landlords, any of them) gave notice in writing to the tenant that possession might be recovered on this ground; and

(b)the First-tier Tribunal is satisfied that the house is required for occupation by such a minister or missionary as such a residence.

2. The Case Management Discussion

2.1 The Case Management Discussion took place on 16 October 2018 at Fort William Sheriff Court. The Applicant was represented by Miss Killean, Solicitor. The Respondents were neither present nor represented. The Tribunal noted that Mr Kearns, Respondent had contacted the Tribunal on 15 October 2018 to advise the Respondents were unable to attend due to his wife having been involved in a car accident.

2.2 No written information from the Respondents had been received by the Tribunal. Miss Killean indicated that she wished the Case Management Discussion to proceed as the application was insisted upon. The Tribunal considered that notice had been given to the Respondents of the Case Management discussion in terms of Rule 24 of the First-Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) and, in the absence of any written information from the Respondents as to their inability to attend, the Case Management Discussion should proceed in the Respondents’ absence under Rule 29 of the Rules.

2.3 Miss Killean advised that the Property was one of two manses serving the congregation. The previous minister had not occupied the property. She referred to the letter from Mr Roderick MacLeod of the Presbytery of Locharron Skye. Permission to call a minister had been given and the other manse was uninhabitable due to its condition. A minister could not be called until accommodation was available. Accordingly, the present

application was made to recover possession of the property which was to serve as accommodation for the prospective minister.

3. Reasons for Decision

- 3.1 The Tribunal considered the terms of Ground 5 of the Schedule 5 of the 1988 Act. On the basis of the submissions by Miss Killean and the accompanying letter from the Presbytery of Locharron Skye, the Tribunal was satisfied that the Property was held by the Applicant for the purpose of being available for occupation by a minister as a residence from which to perform his duties of office.
- 3.2 Furthermore, the Tribunal was satisfied that notice had been given to the Respondents that possession might be recovered on Ground 5 and that the Property was required for occupation by a minister as such a residence. The offer of tenancy, signed by the Respondents on 30 April 2015 prior to the commencement of the Tenancy on 1 May 2015, confirmed, at paragraph 21, that possession may be sought on this ground. The aforementioned letter from the Presbytery of Locharron Skye together with the submissions of Miss Killean confirmed the circumstances in which vacant possession of the Property was required.
- 3.3 Finally, the Tribunal considered the terms of Section 18 of the 1988 Act. Section 18 requires the Tribunal to make an order for possession if any of the grounds in Part 1 of Schedule 5 are found to be established. Ground 5 is one of the grounds within Part 1. The Tribunal had found Ground 5 to be established. Notice of the Applicants' intention to make the present application had been given in Form AT6 to the Respondents on 16 May 2018, as required by Section 19 of the 1988 Act. The required period of notice, being two months, had been given.

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.

Alastair Houston

Legal Member/Chair

Date

16 October 2018