

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/18/2073

**Re: Property at Flat 2/2, 43 St Clement Place, Dundee, DD3 9PG (“the
Property”)**

Parties:

**TA Quality Properties, 2E Denhead Crescent, Dundee, DD2 4SJ (“the
Applicant”)**

**Ms Gillian Tinney, Flat 2/2, 43 St Clement Place, Dundee, DD3 9PG (“the
Respondent”)**

Tribunal Members:

Fiona Watson (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application is refused.**

The Applicant submitted an application under Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The application sought an order for possession of the Property against the Respondent.

A Hearing took place on 8 October 2018. Mr Steven Forsyth of Muir Myle Laverty, Solicitors, appeared on behalf of the Applicant. There was no appearance by or on behalf of the Respondent.

Mr Forsyth moved for the application to be granted. The application for possession of the Property was based on Grounds 8, 11 and 12 under Schedule 5 to the Housing (Scotland) Act 1988. Mr Forsyth advised that the rent arrears had increased to the sum of £10,551.48 as at 5 October 2018. He submitted that the tenant was well in

excess of three months' rent arrears and accordingly the mandatory Ground 8 had been established.

Mrs Watson raised with Mr Forsyth that the date of removal specified in the Notice to Quit was 9 July 2018. However, the tenancy agreement commenced on 9 May 2018 and ran to 7 November 2018. Thereafter in terms of Clause 2 of the said tenancy agreement, "*the lease will continue on a month to month basis and that on the same terms and conditions as herein contained until either the Landlord or the Tenant gives to the other two months' written notice to quit.*" Mrs Watson raised that the lease was therefore running to the 7th of each month and that the Notice to Quit should specify a date of removal which coincides with that monthly date. Furthermore, Mrs Watson raised with Mr Forsyth that Clause 2 of the said tenancy agreement provides for a longer contractual notice to quit notice period than had been given, as the Notice to Quit had been served by Sheriff Officer on 25 May 2018, thereby not giving the contractual two month notice period.

Mr Forsyth submitted that he considered that a Notice to Quit only required to give 40 days' notice and therefore a longer period was not required, regardless of the provisions of the lease. Furthermore, Mr Forsyth submitted that in terms of the Housing (Scotland) Act 1988, only 14 days' notice was required to be given in terms of the Form AT6 served on the tenant and that this had been complied with.

Mrs Watson thereafter raised with Mr Forsyth that the said tenancy agreement had no provision for being brought to an end on the basis of the grounds of repossession being relied upon, namely Grounds 8, 11 and 12 of Schedule 5 to the said 1988 Act. Mrs Watson asked Mr Forsyth to comment on whether or not on that basis, was the Tribunal able to grant the order sought in terms of the provisions of section 18(6) of the said 1988 Act? Section 18(6) of the said 1988 Act states that the Tribunal "*shall not make an order for possession of the house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless (a) the ground for possession is Ground 2 or Ground 8 in Part 1 of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9 or Ground 10 or Ground 17; and (b) the terms of the tenancy make provision for it to be brought to an end on the ground in question.*" Mr Forsyth submitted that his position remained that the Notice to Quit served was competent and had ended the contractual tenancy, and therefore on the basis that the tenancy agreement was now running on the basis of being a statutory tenancy the statutory provisions of section 18(6) of the said 1988 Act had been complied with and the Tribunal could grant the Order on that basis.

The Tribunal adjourned the Hearing at 2.16pm to consider the submissions made by Mr Forsyth.

The Hearing was re-convened at 2.35pm.

The Tribunal issued a decision to refuse the Application for possession of the Property. The Tribunal was of the view that the Notice to Quit served on the tenant

was incompetent. Firstly due to the Notice to Quit not tying in with the ish date of the tenancy agreement, being 7th of the month. Secondly, the Tribunal took the view that the tenancy agreement at Clause 2 provided for a longer period of notice of 2 months for the Notice to Quit and that as the Notice to Quit had only been served on 25 May 2018, this gave the Respondent less than 2 months' notice of the date of removal.

Taking into account the terms of section 18(6) of the said 1988 Act referred to above, the Tribunal considered that as no valid Notice to Quit had been served, the contractual tenancy remained in existence. As the contractual tenancy contained no provision to being brought to an end on the grounds in question, the Tribunal could not grant an Order for possession in terms of the said section 18(6).

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") accordingly determined that the application be refused.

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.

Fiona Watson

Legal Member/Chair

8/10/18.

Date