



**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/18/2618**

**Re: Property at 9 Gilcomstoun Land, Aberdeen, AB10 1TA**

**Parties:**

**Mrs Linda Poole, 11 Robon Hood Meadow, Hemel Hempstead, HP2 6NH (“the Applicant”)**

**Laurie and Co Solicitors LLP, 17 Victoria Street, Aberdeen, AB10 1PU (“the Applicant’s Agent”)**

**Mr Marcus Poole, 9 Gilcomstoun Land, Aberdeen, AB10 1TA (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)  
David Maciver (Housing Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make no order and therefore dismissed the application.**

**Background**

1 The Applicant submitted an application dated 3 October 2018 to the Tribunal under Rule 65 of the First-tier Tribunal (Housing and Property Chamber) Procedure Regulations 2017 for an order for repossession of the Property against the Respondent. In support of the application, the Applicant submitted the following documentation:-

- a. Copy AT6 dated 25<sup>th</sup> June 2018;
- b. Copy Notice to Quit dated 25<sup>th</sup> June 2018;
- c. Sheriff Officers proof of service in respect of the AT6 and Notice to Quit;  
and

- d. Copy Notice to the Local Authority under section 11 of the Homelessness etc (Scotland) Act 2003.
- 2 By letter dated 12<sup>th</sup> October 2018 the Tribunal wrote to the Landlord to request further details regarding the essential elements of the verbal lease agreement. In particular the Tribunal sought details regarding the date of commencement of the lease and the duration. By letter dated 15<sup>th</sup> October 2018 the Applicant's Agent advised that the Respondent had moved into the property in October 2007. There had been an agreement between the parties that he would stay rent free until he found employment and subject to certain conditions regarding decoration and maintenance up until the date the Applicant retired, at which point a rent would be charged. The Applicant had retired on 12 September 2014 however the Respondent had failed to sign a written tenancy agreement. He had made three payments of rent in 2016 as noted in the application, the first of these having been received on 29<sup>th</sup> January 2016.
- 3 By Notice of Acceptance of Application dated 22<sup>nd</sup> October 2018, the Convener with delegated powers of the Chamber President intimated that there were no grounds to reject the application. Having regard to the grounds for repossession relied upon in this case the Convener considered that a Hearing would be required. The Hearing was therefore assigned for 4<sup>th</sup> December 2018.
- 4 A copy of the application together with supporting documentation and notification of the Case Management Discussion was served on the Respondent by Sheriff Officers on 14 November 2018.

### **The Hearing**

- 5 The Hearing took place on 4<sup>th</sup> December 2018 at the Credo Centre, Aberdeen. Ms Ward appeared on behalf of the Applicant's Agent. Neither the Applicant nor the Respondent were present.
- 6 As a preliminary issue the Tribunal sought clarification regarding the commencement date of the tenancy. It appeared to the Tribunal to be the 29<sup>th</sup> January 2016. Ms Ward agreed, stating that the contractual tenancy between the parties had been created verbally and took effect on the date the first payment of rent was made on 29<sup>th</sup> January 2016. In the absence of any specified term, the Tribunal noted that the tenancy would therefore be continuing by tacit relocation on an annual basis.
- 7 The Tribunal then queried the Notice to Quit. Taking cognisance of the term of the tenancy, the Tribunal asked Ms Ward why the 10<sup>th</sup> July 2018 had been stated as the termination date of the tenancy. Ms Ward advised that it had been difficult to identify the commencement date of the tenancy given that it had been entered into verbally between the parties. She stated that the date of the 10<sup>th</sup> July may have been selected as it followed the notice period for service of the Notice and the AT6. She accepted however that taking into

account the commencement date of the tenancy, being 29<sup>th</sup> January 2016, the 10<sup>th</sup> July 2018 would not be a correct ish date.

- 8 The Tribunal then queried the period of notice that had been given for the Notice to Quit. It had been served on 25<sup>th</sup> June 2018 with an effective date of 10<sup>th</sup> July 2018. Ms Ward advised that it had been served in line with the notice period for the AT6. However she accepted that the period of notice for a Notice to Quit, which in the view of the Tribunal and having regard to the length of the tenancy would be forty days, was not the same as that for the AT6.
- 9 The Tribunal adjourned to consider the application. It considered that there was sufficient information at the hearing on which to make a determination of the application. The Tribunal therefore reconvened the hearing and determined to make no order.

### **Findings in Fact**

- 10 Having considered the written and verbal submissions from the Applicant's Agent, the Tribunal made the following findings in fact:-
  - a. The parties entered into a contractual tenancy in respect of the Property which commenced on 29<sup>th</sup> January 2016.
  - b. The tenancy is an assured tenancy as defined by section 12 of the Housing (Scotland) Act 1988. The tenancy was entered into verbally. There is no written tenancy agreement between the parties and therefore no provision for the tenancy to be terminated on the grounds relied upon in the application.
  - c. The Notice to Quit is does not terminate the tenancy at the ish.
  - d. The Respondent has not been given the required forty day notice for service of the Notice to Quit.
  - e. The Notice to Quit is therefore invalid and the contractual tenancy between the parties continues by tacit relocation.

### **Reasons for Decision**

- 11 In this case the Applicant seeks recovery of possession of an assured tenancy on grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 ("the 1988 Act").
- 12 Section 18(6) of the 1988 Act provides that the Tribunal cannot make an order for repossession of a house subject to a contractual assured tenancy on grounds 8, 11 or 12, unless the terms of the tenancy make provision for it to be brought to an end on any of those grounds. In most circumstances, the

tenancy agreement will make provision for repossession to be sought on any of the grounds specified in section 18(6). However in this case, there is no tenancy agreement between the parties and accordingly the requirement to state the grounds in question cannot be satisfied.

- 13 The Applicant would therefore require to terminate the contractual assured tenancy by service of a valid Notice to Quit in order to create a statutory assured tenancy before the Tribunal could consider making an order for repossession of the property. A Notice to Quit together with an AT6 had been served on the Respondent by Sheriff Officers on 25<sup>th</sup> June 2018. There are however two errors in the Notice to Quit which prove fatal to the application.
- 14 Firstly, the Notice to Quit does not terminate the tenancy at a valid ish date. The Applicant's Agent conceded that the tenancy between the parties had been created by the first payment of rent on 29<sup>th</sup> January 2016. However the Notice to Quit sought to terminate the tenancy on 10<sup>th</sup> July 2018 which was not a valid ish.
- 15 Further, the Respondent has not been given the required notice period for a Notice to Quit. Having regard to the term of the tenancy, being in excess of four months, the Tribunal concluded that the required notice would be forty days.
- 16 Accordingly in the absence of a valid Notice to Quit, the Tribunal concluded that the tenancy between the parties remains a contractual assured tenancy, not a statutory assured tenancy. In the absence of any provision for repossession to be sought on the stated grounds the Applicant was unable to satisfy the provisions of section 18(6) of the 1988 Act and on that basis the Tribunal was unable to make an order for repossession. The application was therefore dismissed.
- 17 The decision of the Tribunal was unanimous.

### **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.**

**Ruth O'Hare**

6 December 2018

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**Legal Member/Chair**

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**Date**

