



**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/18/1231**

**Re: Property at Ground Floor Left, 12A Rosefield Street, Dundee, DD1 5PP  
("the Property")**

**Parties:**

**Matthew Properties (A Firm), Quarry Cottage, Main Street, Inchtute, Perthshire,  
PH14 9RN ("the Applicant")**

**Mr Wayne Pitkeithly, Ground Floor Left, 12A Rosefield Street, Dundee, DD1  
5PP ("the Respondent")**

**Tribunal Members:**

**Valerie Bremner (Legal Member) and Melanie Booth (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the  
Tribunal") determined that**

**Background**

This is an application in terms of Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber ( Procedure ) Regulations 2017 as amended seeking a possession order in terms of S18 of the Housing ( Scotland ) Act 1988 for the property at Ground Floor Left ,12 A Rosefield Street, Dundee DD1 1NU.

The Tribunal had sight of the application, tenancy agreement, AT6, rent statement and a notice in terms of s 11 of the Homelessness etc ( Scotland) Act 2003. The AT6 Notice appeared to have been properly and timeously served on the Respondent.

The Applicant attended the Hearing and was represented by Mr Myles of J Myles and Co solicitors Dundee. The Respondent did not attend the Hearing but the

application and supporting documents and the date of the Hearing had been served on him by Sheriff Officers and Mr Myles sought to proceed in the absence of the Respondent in terms of the Tribunal Rules and the Tribunal was prepared to proceed in the Respondent's absence.

### **The Hearing Discussion**

A possession order was sought here in terms of Grounds 8,11 and 12 of Schedule 5 of the Housing ( Scotland ) Act 1988.

The tenancy agreement in this matter started on 12<sup>th</sup> February 2011 for a period of 6 calendar months and continued for successive periods of 6 months or until either party gave notice.

The tenancy agreement was further considered by the Hearing and it was noted that aside from clause 10 part (f) of the Tenancy agreement the agreement made no reference to the eviction grounds relied on in this application in terms of Schedule 5 of the 1988 Act and if the contractual tenancy was still ongoing then a possession order could not be made in terms of Section 18(6) of the 1988 Act. This was not disputed by Mr Myles. Mr Myles produced a Notice to Quit not seen previously by the Tribunal which was dated 11 August 2016 and had been served in respect of a previous attempt to obtain a possession order in terms of S33 of the 1988 Act. He sought to rely on this to demonstrate that the contractual tenancy had been brought to an end and to suggest that the Tribunal was not therefore bound by the terms of Section 18(6) of the Act. His position appeared to be that since the lease allowed for termination by the landlord if the tenant fell into arrears and was in breach of a material term of the lease then this coupled with the Notice to Quit served would allow the Tribunal to make a possession order under Section 18 of the 1988 Act despite the lack of reference to the eviction grounds relied on in the tenancy agreement.

The Applicant produced a second schedule of unpaid rent bringing the arrears up to date and this appeared to show that the last rent was paid by the Respondent in November 2016 and that no rent had been paid since. The arrears were said to be £9629.01.

### **Findings in Fact**

The Tribunal was of the view that if this tenancy agreement remained a contractual tenancy then the terms of Section 18(6) of the 1988 Act would apply and no possession order could not be made. The Notice to Quit was considered and the Tribunal found that it was valid in terms of its content and the method by which it was served was appropriate .However the Tribunal found that the Notice to Quit gave a date of 12 October 2016 for the Respondent vacating the property and that this date did not coincide with the ish dates in the lease, the earliest of which would have been 6 calendar months from the renewal date, being a date in either February or August of 2016. This fact appeared not to be disputed by the Applicant or his representative. The Tribunal found that as the Notice to Quit date did not coincide with the ish dates that it was not valid and had not brought the contractual tenancy to an end.

As this tenancy agreement was still therefore a contractual tenancy, Section 18(6) of the 1988 Act applies.

### Reasons for Decision

The Tribunal found that the Notice to Quit was not valid in this matter having regard to the comments of Sheriff Mackie in the case of *The City of Edinburgh Council v Martin Smith* [2016] SC EDIN 42 at paragraph 22 where she observes that a Notice to Quit is defective where it specifies a date other than the ish date.

The Tribunal further had regard to Robson on Residential Tenancies 3<sup>rd</sup> Edition 2012 at paragraph 11-05 where he discusses the terms of the Housing (Scotland) Act 1988 and in a discussion on termination of contractual tenancies he states, " the landlord would have to terminate the contractual tenancy **at its term** by giving notice to quit." ( Emphasis by the Tribunal ).

As the contractual tenancy continues here then Section 18(6) of the 1988 Act is engaged and the Tribunal cannot make an order for possession where the eviction grounds relied upon are not stated within the tenancy agreement.

### Decision

The Tribunal dismissed the application for a possession order.

### 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.**

Valerie Bremner

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**Legal Member/Chair**

3/8/18  
\_\_\_\_\_  
**Date**