

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(1) of the Housing (Scotland) Act 1988 (“1988 Act”)

Chamber Ref: FTS/HPC/EV/18/2025

Re: 18 Main Street, Wishaw, ML2 7AF (“the Property”)

Parties:

TCIB RESIDENTIAL LLP trading as NEWKEYLETS, 119 Main Street, Wishaw, ML2 7AU (“the Applicant”)

Mr Alex Smith, 18 Main Street, Wishaw, ML2 7AF (“the Respondent”)

Tribunal Members:

Pamela Woodman (Legal Member)

Present:

The case management discussion in relation to case reference FTS/HPC/EV/18/2025 took place at 2.00pm on Thursday 29 November 2018 in room 112, Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT (“**the CMD**”). The Applicant was represented by Andy Smith (“**the Applicant’s Representative**”), who confirmed he was one of the partners of the Applicant. The Respondent was not present nor was he represented at the CMD. The clerk to the Tribunal was Linda O’Neill.

Summary of decision (made in the absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“**the Tribunal**”) determined that the order for possession in relation to an assured tenancy sought in relation to case reference FTS/HPC/EV/18/2025 be refused.

Background

1. The Applicant made an application to the Tribunal under rule 66 (*Application for order for possession upon termination of a short assured tenancy*) in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended, (“**2017 Regulations**”). Rule 66 of the HPC Rules relates to an

application by a landlord under section 33 (*recovery of possession on termination of a short assured tenancy*) of the 1988 Act. However, following correspondence with the Tribunal prior to acceptance of the application, the Applicant confirmed that it was seeking an order for possession in terms of rule 65 of the HPC Rules (*application for order for possession in relation to assured tenancies*).

2. The application form in relation to case reference FTS/HPC/EV/18/2025 was dated 7 August 2018, and stamped as having been received by the Tribunal on 7 August 2018. The order sought from the Tribunal was an order for possession.
3. The application form was accompanied by various documents.
4. A notice of acceptance of the application in respect of case reference FTS/HPC/EV/18/2025 was issued by the Tribunal dated 17 October 2018 under rule 9 of the HPC Rules.
5. Letters were sent by the Tribunal to each of the Applicant and the Respondent dated 9 November 2018 confirming that the application had been received, intimating the date of the CMD and noting that written representations from the Respondent must be received by 26 November 2018.
6. No written representations from the Respondent were provided. The Respondent's daughter contacted the Tribunal to confirm that the Respondent would not be available to attend the CMD because he worked away from home from Monday to Friday.
7. The Legal Member had been provided with the certificate of intimation from David A. Orr, sheriff officer, regarding service of the letter from the Tribunal (and accompanying documentation) on the Respondent on 9 November 2018.
8. This decision arises out of the CMD.

Proceedings, namely the CMD

9. The Applicant's Representative confirmed that he was a partner in the Applicant and owned 50% of the business. He noted that there were two limited liability partnerships ("LLPs") involved in the property business he undertook with his business partner, one being the Applicant, the other TCIB LLP.
10. The registered proprietor of the Property, which is registered under title number LAN30809, is the Applicant.
11. The tenancy agreement in relation to the Property, which was provided to the Tribunal, was entered into between TCIB LLP trading as Newkeylets and the Respondent dated 2 October 2017 ("**Tenancy Agreement**"). The landlord in terms of the Tenancy Agreement and the registered proprietor of the Property were, accordingly, different parties. The Applicant's Representative confirmed, during the CMD, that both LLPs were owned by him and John McAleenan. This was confirmed on checking Companies House online. In his capacity as a

designated member of the Applicant, the Applicant confirmed that TCIB LLP had authority from the Applicant to enter into the Tenancy Agreement.

12. However, the application had been raised in the name of the registered proprietor and so the Legal Member considered that it would not be appropriate to amend the applicant party in this case.
13. In terms of the mandatory requirements set out in rule 66 of the HPC Rules, the Applicant had:
 - a. provided a copy of the Tenancy Agreement;
 - b. provided a copy of the notice of the landlord of intention to raise proceedings for possession let on an assured tenancy dated 13 April 2018 ("**Form AT6**"), which stated that the ground on which possession was sought was ground 11 of schedule 5 to the 1988 Act and that proceedings would not be raised before 13 June 2018;
 - c. provided a copy of a document entitled "notice to quit" dated 13 April 2018 ("**NTQ**"); and
 - d. provided evidence that, the Applicant submitted, showed the possession ground had been met in the form of a rental statement ("**Rent Statement**") entitled "Customer Ledger" covering the period from 27 September 2017 and 2 August 2018, which showed rent arrears of £500.19 as at 2 August 2018 or £100.19 as at 1 August 2018 (before the next rental payment was added).
14. The Applicant had not provided evidence of service of either the Form AT6 or the NTQ on the Respondent. The Applicant's Representative offered to provide this to the Tribunal.
15. The Applicant's Representative confirmed that the due date for payment of rent was the same date in each month as the date of entry, and so was the 2nd of each month.
16. The Applicant's Representative was unable to confirm the current amount of rent arrears owed by the Respondent as at the date of the CMD. The Applicant's Representative offered to check this and to provide the updated information to the Tribunal but noted that the arrears were increasing rather than decreasing. He did indicate that at least one payment had been made by the Respondent's daughter on behalf of the Respondent since 2 August 2018 (the last date referred to in the Rent Statement).
17. The Applicant's Representative confirmed that the Respondent was receiving benefits but was not aware of the level of the benefits. He believed that the Respondent had been receiving benefits for the duration of his tenancy under the Tenancy Agreement.

18. The Applicant's Representative advised that the Applicant ran a portfolio of properties as a business and that not knowing when, if or how much rent would be paid by a tenant each month was not sustainable long term because the Applicant had its own expenses to meet, such as salaries. He referred to the Rent Statement which he submitted showed the repeated late payment of rent, often in instalments rather than of the full amount due.

Findings of fact and reasons for decision

19. The application form stated that the Applicant sought to rely on grounds 10, 11, 12, 13, 14 and 15 as set out in schedule 5 to the 1988 Act. However, the Form AT6 only referred to ground 11. The Applicant's Representative confirmed that there was no other/second form AT6 which referred to the other grounds. Accordingly, the Legal Member explained that grounds 10, 12, 13, 14 and 15 could not be relied upon. This was in terms of sections 18(2) and 18(3) of the 1988 Act. Therefore, only ground 11 could be considered as a possible ground on which an order for possession might be made.
20. The Legal Member was satisfied, on the balance of probabilities, that the Respondent had "persistently delayed paying rent which ha[d] become lawfully due". However, she did not have cause (for the reasons given below), nor sufficient evidence, to consider the terms of section 18(4A) of the 1988 Act with regard to whether any delay or failure to pay rent was as a consequence of a delay or failure in the payment of a relevant benefit.
21. The Tenancy Agreement did not make provision for it to be brought to an end on the basis of ground 11 of schedule 5 to the 1988 Act, nor did it restate ground 11 or any of the other schedule 5 grounds. Accordingly, a notice to quit or other notice of termination was required and section 18(6) of the 1988 Act was not applicable.
22. The NTQ, whilst entitled "notice to quit", did not contain the information prescribed in The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and so was not a valid notice to quit.
23. The NTQ also referred to terminating the Tenancy Agreement "under contract clause 5.2" and asking the Respondent to "vacate the premises by 13th June 2018 (60 days notice). Clause 5.2 provided as follows:
- "Either party may terminate this agreement 30 days prior to the end of the rental period by giving written notice to the other party and on the expiry of such notice the tenancy will come to an end without prejudice to any right of action which either party or both parties may have against the other for any breach of this agreement provided that the Landlord and the Tenant shall give at least 30 days notice to either party."
24. The Tenancy Agreement stated that there was "Minimum rental period six months from and including 2/10/17". No end (or ish) date was specified in the Tenancy Agreement. The document entitled "Section 32 Notice of a Short Assured Tenancy" stated that the tenancy would "commence on 2nd October 2017 and is

for a period of six months and ending 2nd April 2018. This tenancy will renew for a further six months unless one months notice is given before the end of contract." The Applicant's Representative submitted that the tenancy was continuing on a month to month basis after 2 April 2018 but was unable during the CMD to provide any legal authority for this. He noted that he had legal advice to that effect, however. The Legal Member noted that, even if the tenancy was continuing on a month to month basis (on which point she was not satisfied on the evidence before her), 13 June 2018 was not a possible end (or ish) date given that the commencement date was not the 13th (or even the 14th) of the month.

25. The Legal Member considered whether the reference to clause 5.2 in the NTQ should be read as clause 5.3 instead. Clause 5.3 provided that the landlord would be entitled to terminate if the monthly rent was unpaid 14 days after becoming due.
26. However, given that the NTQ purported to be a notice to quit, which it was not, and specifically referred to terminating under clause 5.2 as at 13 June 2018, which it could not, the Legal Member was not satisfied that it was just and fair to both parties to imply into the NTQ text which was not there and to amend it accordingly, i.e. the amendment of the reference to clause 5.2 to read instead clause 5.3.
27. Accordingly, the Legal Member was not satisfied, on the balance of probabilities, that a valid notice to quit or other notice to terminate had been issued to the Respondent.

Decision

28. For the reasons set out above, the Tribunal determined that the order for possession in relation to case reference FTS/HPC/EV/18/2025 be refused.
29. For the avoidance of any doubt, this decision shall not preclude the Applicant from making a fresh application for an order for possession of the Property against the Respondent. However, any such application would require to be accompanied by the required documentation and evidence as is set out in the appropriate HPC Rule.

Right of Appeal

In terms of Section 46 of the Tribunals (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.

P Woodman

Legal Member

29.11.18

Date