



**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/19/2798**

**Re: Property at 69 Barkhill Road, Linlithgow, West Lothian, EH49 6BY (“the  
Property”)**

**Parties:**

**Mr John Ewart, 14 Barkhill Road, Linlithgow, West Lothian, EH49 6GZ (“the  
Applicant”)**

**Miss Tracy Gorman, 69 Barkhill Road, Linlithgow, West Lothian, EH49 6BY  
 (“the Respondent”)**

**Tribunal Members:**

**Virgil Crawford (Legal Member)  
Gordon Laurie (Ordinary Member)**

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

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

**BACKGROUND**

1. The Applicant is the proprietor of the property. The Respondent is the tenant;
2. There is no written Lease between the parties. A tenancy was created by way of an exchange of messages through mobile phone texts and social media and oral discussions between the Parties;
3. The tenancy is a contractual assured tenancy in terms of the Housing (Scotland) Act 1988 (the “1988 Act”);
4. The tenancy commenced on 31 July 2016. The rent payable was £575 per calendar month payable on the 1<sup>st</sup> of every month commencing 1 August 2016;
5. On 10 August 2018 the Respondent sent a text message to the Applicant intimating her intention to vacate the Property on 12 September 2018, thereby terminating the tenancy;

6. On or around 6 September 2018 the Respondent was served with a Notice from the Applicant. This Notice was a "Notice to Leave" in terms of the Private Housing (Tenancies) (Scotland) Act 2016 (the "2016 Act") and requested that the Respondent remove herself from the property by 10<sup>th</sup> October 2018;
7. The Tenancy, however, was not a private residential tenancy in terms of the 2016 Act. The Tenancy had commenced before the 2016 Act came into force;
8. The Applicant separately served upon the Respondent a Notice in terms of Section 19 of the Housing (Scotland) Act 1988 – commonly referred to as a form AT6 – indicating an intention to raise proceedings for possession of the property on grounds 8, 10, 11, 12, 14 and 16 within Schedule 5 to the 1988 Act;
9. The Lease between the Parties did not contain any provisions intimating that the tenancy may be brought to an end on the basis of any of the grounds referred to within Schedule 5 of the 1988 Act;
10. A Notice in terms of Section 11 of the Homeless etc. (Scotland) Act 2003 had been intimated to the Local Authority;
11. On 18 October 2018 the Tribunal received an application from the Applicant under Tribunal reference EV/18/2798 seeking an Order for Eviction of the Respondent. The Tribunal subsequently received a further application under Tribunal reference CV/19/0477 seeking an Order for payment in relation to rent arrears;
12. A lengthy exchange of messages between the parties was produced to the Tribunal. It was clear that there were persistent difficulties with payment of rent. There was also an exchange of messages which indicated that the Respondent intended vacating the property and seeking alternative accommodation. The first such message appears to have been forwarded as early as 1 June 2018;
13. A Case Management Discussion was held on 15 February 2019. At the Case Management Discussion concerns were raised by the Tribunal in relation to the following:-
  - a) Whether there was a valid Notice to Quit requiring possession at an ish date;
  - b) Whether or not the Notice to Leave in terms of the 2016 Act constituted a Notice to Quit;
  - c) Whether or not the Tribunal could grant an Order for possession in terms of Grounds 8, 10, 11, 12 and 14 of Schedule 5 to the 1988 Act having regard to the fact that the Lease did not make provision for the same (ref s18(6) of the 1988 Act);
  - d) Whether or not the Respondent had terminated the tenancy by way of text messages to the Applicant intimating her intention to leave the Property;
14. The Tribunal fixed a Hearing to take place on 28<sup>th</sup> March 2019 to consider the case further;

## **THE HEARING**

15. The Applicant attended the Hearing. There was no appearance by or on behalf of the Respondent. The Tribunal was in receipt of an Execution of Service by Sheriff Officers confirming that the place, date and time of the Hearing had been intimated to the Respondent, together with a copy of

- relevant case papers. In the circumstances, the Tribunal, being satisfied in terms of Rule 24 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (the “FTT Rules”) that the Respondent had received reasonable Notice of the same determined that it was appropriate to proceed in accordance with Rule 29 of the FTT Rules;
16. It had previously been determined at the Case Management Discussion that the following facts were not in dispute;
- a) That a tenancy had been created with effect from 31<sup>st</sup> July 2016;
  - b) Rent was payable at the rate of £575 per calendar month payable on the first day of each month;
  - c) The tenancy could be brought to an end with one month’s notice;
  - d) The terms of the tenancy were set out in an exchange of messages which had been supplemented by some verbal agreement;
  - e) There was no written tenancy agreement;
  - f) No Notice in terms of Section 32 of the 1988 Act – commonly referred to as a form AT5 – had been served;
  - g) There was no provision within the tenancy agreement for the tenancy to be terminated on any of the grounds referred to within Schedule 5 to the 1988 Act;
  - h) Tacit relocation was in operation;
  - i) On or around 6<sup>th</sup> September 2018 the Applicant served a “Notice to Leave” upon the Respondent, said Notice being a form of Notice used in relation to the 2016 Act;
17. It was accepted that no valid Notice to Quit had been served. The requirements for a Notice to Quit in relation to an assured tenancy under the Housing (Scotland) Act 1988 are regulated by the Rent (Scotland ) Act 1984 (“the 1984 Act”) Section 112 and the Assured Tenancies (Notice to Quit)(Prescribed Information) (Scotland) Regulations 1988. (SI No.1988/2067) (the “1988 Regs”). S112 of the 1984 Act provides as follows:-

***112.— Minimum length of notice to quit.***

*(1) No notice by a landlord or a tenant to quit any premises let (whether before or after the commencement of this Act) as a dwelling-house shall be valid unless it is in writing and contains such information as may be prescribed and is given not less than four weeks before the date on which it is to take effect.*

*(2) In this section “prescribed” means prescribed by regulations made by the Secretary of State by statutory instrument, and a statutory instrument containing any such regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.*

*(3) Regulations under this section may make different provision in relation to different descriptions of lettings and different circumstances.*

The 1988 Regs provide that a Notice to Quit must contain the following information:-

*INFORMATION TO BE CONTAINED IN THE NOTICE TO QUIT*

1. Even after the Notice to Quit has run out, before the tenant can lawfully be evicted, the landlord must get an order for possession from the court.
2. If a landlord issues a Notice to Quit but does not seek to gain possession of the house in question the contractual assured tenancy which has been terminated will be replaced by a statutory assured tenancy. In such circumstances the landlord may propose new terms for the tenancy and may seek an adjustment in rent at annual intervals thereafter.
3. If a tenant does not know what kind of tenancy he has or is otherwise unsure of his rights he can obtain advice from a solicitor. Help with all or part of the cost of legal advice and assistance may be available under the Legal Aid legislation. A tenant can also seek help from a Citizens Advice Bureau or Housing Advisory Centre.

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

*These Regulations prescribe the information to be contained in a Notice to Quit given by a landlord to terminate a tenancy which is an assured tenancy under the Housing (Scotland) Act 1988. Failure to include such information will in terms of section 112 of the Rent (Scotland) Act 1984 render the Notice to Quit invalid.*

18. Section 18 of the 1988 Act provides as follows:-

**18.— Orders for possession.**

*(1) The sheriff 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.*

*(2) The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.*

*(3) If the sheriff 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) ] 1 below, he shall make an order for possession.*

*(3A) If the sheriff is satisfied—*

*(a) that Ground 8 in Part I of Schedule 5 to this Act is established; and*

*(b) that rent is in arrears as mentioned in that Ground as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit, he shall not make an order for possession unless he considers it reasonable to do so.*

*(4) If the sheriff is satisfied that any of the grounds in Part II of Schedule 5 to this Act is established, he shall not make an order for possession unless he considers it reasonable to do so.*

*(4A) In considering for the purposes of subsection (4) above whether it is reasonable to make an order for possession on Ground 11 or 12 in Part II of Schedule 5 to this Act, the sheriff shall have regard, in particular, to the extent to which any delay or failure to pay rent taken into account by the sheriff in determining that the Ground is established is or was a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit.*

*(5) Part III of Schedule 5 to this Act shall have effect for supplementing Ground 9 in that Schedule and Part IV of that Schedule shall have effect in relation to notices given as mentioned in Grounds 1 to 5 of that Schedule.*

*(6) The sheriff shall not make an order for possession of a 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 I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9, Ground 10, Ground 15 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.*

*(6A) Nothing in subsection (6) above affects the sheriff's power to make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, where the ground for possession is Ground 15 in Part II of Schedule 5 to this Act.*

*(7) Subject to the preceding provisions of this section, the sheriff may make an order for possession of a house on grounds relating to a contractual tenancy which has been terminated; and where an order is made in such circumstances, any statutory assured tenancy which has arisen on that termination shall, without any notice, end on the day on which the order takes effect.*

*(8) In subsections (3A) and (4A) above—*

*(a) "relevant housing benefit" means—*

*(i) any rent allowance or rent rebate to which the tenant was entitled in respect of the rent under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971);*

*or*

*(ii) any payment on account of any such entitlement awarded under Regulation 91 of those Regulations;*

*(aa) "relevant universal credit" means universal credit to which the tenant was entitled which includes an amount under section 11 of the Welfare Reform Act 2012 in respect of the rent;*

*(b) references to delay or failure in the payment of relevant housing benefit or relevant universal credit do not include such delay or failure so far as referable to any act or omission of the tenant.*

19. It was accepted that, having regard to the terms of Section 18(6) of the 1988 Act, in the absence of provision within the tenancy agreement, and having regard to the grounds stated in this application, the only ground on which the Tribunal could grant an Order for possession was in relation to Ground 10 of Schedule 5 of the 1988 Act;

## **FINDINGS IN FACT**

20. The Tribunal made the following findings in fact:-

a) That a tenancy had been created with effect from 31<sup>st</sup> July 2016;

- b) Rent was payable at the rate of £575 per calendar month payable on the first day of each month;
- c) The tenancy could be brought to an end with one month's notice;
- d) The terms of the tenancy were set out in an exchange of messages which had been supplemented by some verbal agreement;
- e) There was no written tenancy agreement;
- f) No Notice in terms of Section 32 of the 1988 Act – commonly referred to as a form AT5 – had been served;
- g) There was no provision within the tenancy agreement for the tenancy to be terminated on any of the grounds referred to within Schedule 5 to the 1988 Act;
- h) Tacit relocation was in operation;
- i) On 10 August 2018 the Respondent advised the Applicant that she intended vacating the Property on 12 September 2018. The Respondent, accordingly, had given notice to quit;
- j) the Respondent has given a notice to quit which has expired;
- k) the Respondent has remained in possession of the whole of the Property;
- l) proceedings for the recovery of possession have been begun not more than six months after the expiry of the notice to quit;
- m) the tenant is not entitled to possession of the house by virtue of a new tenancy;
- n) On or around 6<sup>th</sup> September 2018 the Applicant served a "Notice to Leave" upon the Respondent, said Notice being a form of Notice used in relation to the 2016 Act. This notice is of no legal effect;
- o) A Notice in terms of Section 11 of the Homeless etc. (Scotland) Act 2003 had been intimated to the Local Authority;
- p) On or around 23 September 2018 the Applicant served upon the Respondent a Notice in terms of Section 19 of the Housing (Scotland) Act 1988 indicating an intention to raise proceedings for possession of the property on grounds 8, 10, 11, 12, 14 and 16 within Schedule 5 to the 1988 Act;
- q) The Lease between the Parties did not contain any provisions intimating that the tenancy may be brought to an end on the basis of any of the grounds referred to within Schedule 5 of the 1988 Act;

## **REASONS FOR DECISION**

21. The tenancy having been terminated by the Respondent and the Applicant having served a notice in terms of s19 of the 1988 Act upon the Respondent which, amongst other things, intimated an intention to raise proceedings on the basis of Ground 10 of Schedule 5 to the 1988 Act, the Notice was valid to that extent, as there is no requirement within Section 18 (6) of the 1988 Act that Ground 10 be referred to within the tenancy agreement;
22. The other requirements of Ground 10 of Schedule 5 to the 1988 Act had been met. In the circumstances it is appropriate that an order for possession be granted on that basis;
23. Given the fact the tenancy agreement contained no provisions stating it may be terminated on the basis of Grounds 8, 11, 12, 14 and 16 of Schedule 5 of

the 1988 Act, no order for recovery of possession could be granted on those grounds

## **DECISION**

The Tribunal grants order to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property at 69 Barkhill Road, Linlithgow, West Lothian, EH49 6BY and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

The Order is not to be executed prior to 12 noon on 6 May 2019

## **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.**

Virgil Crawford

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**Legal Member/Chair**

29 March 2019

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**Date**