



**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/19/4001**

**Re: Property at 4B High Street, Kirriemuir, DD8 4EY (“the Property”)**

**Parties:**

**Milnbank Developments, Unit 5, Station Road, Forfar, Angus, DD8 3TB (“the Applicant”)**

**Mr Hugh Blake, Unknown, Unknown (“the Respondent”)**

**Tribunal Members:**

**Susan Christie (Legal Member)**

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

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

**Background**

1. The application was made under Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017. It seeks recovery of the property from the Respondent.
2. It was accepted by the Tribunal on 4 March 2020.
3. A Direction was made on 4 March 2020 requesting clarification at the subsequent Case Management Discussion (CMD) of various matters relating to the paperwork produced and the Ground(s) that might be relied upon for recovery as no specific Grounds were referred to in the AT6 form, and further that the Applicant should provide written evidence of anti-social behaviour or conviction 14 days before the CMD.
4. No response was received to the Direction.
5. A Case Management Discussion took place on 31 August 2020. The Applicant was represented by Ms Latham of BS properties Limited. It became apparent that service had not been made on the Respondent and the CMD was therefore continued to a later date for service to be attempted. It was noted

that the Direction had not be answered and Ms Latham said she had not seen it. A second copy was to be issued to her along with the Note of the CMD and this was later done on 3 September 2020.

6. Service by Sheriff Officer was unsuccessful and service on the Respondent was thereafter carried out by Advertisement on the tribunal website.

### **The Case Management Discussion- 18 November 2020.**

1. I was provided with a Certificate of Service by Advertisement in respect of service for the Respondent which I was satisfied with.
2. The Applicant's Representative was advised of the details of this CMD by letter on 16 September 2020.
3. Neither Party participated or was represented, and I proceeded to decide the application in their absence.
4. I considered in particular the following:
  - The application form
  - The Notice to Quit dated 13 November 2019
  - The AT6 form dated 17 December 2019
  - The Sheriff Officer Service Certificate dated 14 November 2019
  - The Short Assured Tenancy Agreement
  - The Section 33 Notice dated 13 November 2019
  - The Section 11 Notices and an e mail to Forfar and Angus Council
  - Sheriff Officers Report to the Tribunal dated 21 September 2020
  - The Direction
  - CMD Note of 31 August 2020

### **Findings in Fact**

- I. The Short Assured Tenancy between the Parties commenced on 1 April 2011 for a fixed term of 12 months to 31 March 2012. It recurred thereafter yearly, in the absence of any further provision in the lease. The *ish* occurred on 31 March yearly. The landlord required to give two months' notice to terminate the lease.
- II. The Notice to Quit dated 13 November 2019 does not contain a date within it on which the tenant was to leave by. It is invalid.
- III. Neither the AT6 nor the application form discloses a specific Ground relied upon, as one of those set out in Schedule 5 to the Housing (Scotland) Act 1988.
- IV. The AT6 form dated 17 December 2019 is invalid as it does not contain the necessary information and a specific Ground and contains inaccurate or missing information. No evidence of service of it has been produced.
- V. On 21 September 2020, Sheriff Officers found the Property to which this application relates empty and unoccupied, the front door to the Property was smashed opened and vandalised.
- VI. Proper Notice has not been given to the local authority in whose area the property is situated as is required by Section 19A of the Housing (Scotland) Act 1988.
- VII. The Application for an Order for possession of the Property is refused.

## Reasons for Decision & Decision

The Short Assured Tenancy between the Parties commenced on 1 April 2011 for a fixed term of 12 months to 31 March 2012. It recurred thereafter yearly, in the absence of any further provision in the lease. The *ish* occurred on 31 March yearly. The landlord required to give two months' notice to terminate the lease.

The application form cites the possession/eviction Grounds as "Health and Safety, Notice to Quit." It relies on being made under Rule 65- possession on mandatory or discretionary grounds in terms of Section 18 of the Housing (Scotland) Act 1988 ('the Act').

The Notice to Quit did not contain a date within it on which the tenant was to leave by. It did contain the prescribed information.

The Section 33 Notice produced had the wrong start date for the tenancy within it as it referred to 7 June 2016. It required vacant possession by 14 February 2020. It was served by Sheriff Officers on the Respondent personally on 14 November 2019. I disregarded the Section 33 Notice as the application was not made under Rule 66.

The first Section 11 Notice does not disclose the name of the local authority to which it is to be sent but the address detailed is in Dundee; the start date of the tenancy is wrongly noted; the legislation relied upon is not identified. The second Section 11 Notice discloses the name of the local authority to which it is to be sent- Angus Council; the start date of the tenancy is wrongly noted; the date of raising the proceedings is stated as 17 December 2012; the legislation relied upon is not identified. There is an email dated 22 January 2020 to what appears to be Angus Council, but it is not clear which of the two flawed notices was sent with it. I am not satisfied that intimation was properly made.

The AT6 –

Part 2 has not been completed to disclose the Ground relied on. At Part 3 the information contained there does not clearly correlate with a particular Ground under the Act. It does not give particulars that could be comprehended on ordinary reading as relevant. No date is inserted in Part 4 for the date after which proceedings will be raised. There is no evidence of how, where and when it was served, if it was served at all.

I considered the terms of Section 18 of the Act. An Order shall not be made for possession of a house let on an assured tenancy except on one of the Grounds set out in Schedule 5 to the Act. It was not clear which Ground was being relied on in this application and therefore it was impossible for me to consider it.

The Sheriff Officers Report to the Tribunal dated 21 September 2020 stated that on attendance the Property to which this application relates was found to be empty and unoccupied, the front door to the Property was mashed opened and vandalised and clearly no-one was residing at the Property at this time is the view given. A neighbour confirmed the Respondent no longer resides. This report was crossed

over to the Applicant's Representative and it might have been a factor in her not participating in the CMD. In any event there appeared to be no answers to the Direction and therefore no answers to the various points raised about the apparent flaws in the paperwork produced.

I refused the application for all the reasons above.

### **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.**

**S. C**

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**Legal Member/Chair**

**18 November 2020**  
**Date**