



**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/23/0807

Re: Property at Flat 0/1, 60 Fergus Drive, Glasgow, G20 6AW (“the Property”)

Parties:

**Ms Gabrielle McGonigal, Bronwen Evans, 2 Main Street, Bannockburn, Stirling
 (“the Applicant”)**

**Mr Andrew Campbell, Flat 0/1, 60 Fergus Drive, Glasgow, G20 8AW (“the
 Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member) and Melanie Booth (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
 Tribunal”) determined to make an eviction order**

Background

- 1 By application to the Tribunal the Applicants sought an eviction order against the Respondent in respect of the Property under section 33 of the Housing (Scotland) Act 1988. In support of the application the Applicants provided the following documentation:-
 - (i) Form AT6 dated 20 February 2023 together with proof of service by Sheriff Officers;
 - (ii) Notice of terms of tenancy dated 2 February 2010 and 3 March 2010;
 - (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Glasgow City Council together with proof of service;

- (iv) Excerpt documents from the Tribunal under reference FTC/HPC/RE/22/4020 in terms of an application for right of entry; and
 - (v) Copy correspondence in the form of letters and emails between the Applicants and the Respondent and a rent statement.
- 2 By Notice of Acceptance of Application dated 2 May 2023 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was assigned for the 27 June 2023. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondents by Sheriff Officers.
- 3 The Applicants subsequently submitted further written representations by email with supporting evidence for the grounds relied upon.

Case Management Discussion

- 4 The Case Management Discussion took place by teleconference on 27 June 2023. The Applicants were both present. Ms McGonigal confirmed she would address the Tribunal on the application on behalf of the Applicants. The Respondent was not in attendance. The Tribunal noted that he had been served with the application paperwork together with notification of the date and time of the Case Management Discussion. He had also responded to service of the application paperwork by emailing the Tribunal to seek clarification. The Tribunal therefore determined to proceed in his absence.
- 5 Ms McGonigal proceeded to address the Tribunal on the application, citing the grounds relied upon. She confirmed arrears outstanding of £554 and outlined the issues faced in gaining access to the property to carry out inspections and repairs. An application to the Tribunal had been made to gain entry however this had only resulted in a short five minute visit to the property to take photographs of the damp affected areas. The property required urgent repair, as the current condition was detrimental to the property itself and neighbouring flats. The Respondent had sent inappropriate and harassing communications to Ms McGonigal and his correspondence was hostile and intimidating. This had also been reflected in his correspondence with the Tribunal. The Applicants therefore sought an eviction order.

Relevant Legislation

- 6 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Housing (Scotland) Act 1988, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

“18 Orders for possession.

(1) The First-tier Tribunal 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.

(4) If the First-tier Tribunal is satisfied that any of the grounds in Part I or II of Schedule 5 to this Act is established, the Tribunal shall not make an order for possession unless the Tribunal 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 First-tier Tribunal shall have regard, in particular, to—

(a) the extent to which any delay or failure to pay rent taken into account by the Tribunal 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, and

(b) the extent to which the landlord has complied with the pre-action protocol specified by the Scottish Ministers in regulations.

(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 First-tier Tribunal 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 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 First-tier Tribunal'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 First-tier Tribunal 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 subsection (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.

(9) Regulations under subsection (4A)(b) may make provision about—

(a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),

(b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.

(10) Regulations under subsection (4A)(b) are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).

19 Notice of proceedings for possession.

(1) *The First-tier Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless—*

(a) the landlord (or, where there are joint landlords, any of them) has served on the tenant a notice in accordance with this section; or

(b) the Tribunal considers it reasonable to dispense with the requirement of such a notice.

(2) The First-tier Tribunal shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground and particulars of it are specified in the notice under this section; but the grounds specified in such a notice may be altered or added to with the leave of the Tribunal.

(3) A notice under this section is one in the prescribed form informing the tenant that—

(a) the landlord intends to raise proceedings for possession of the house on one or more of the grounds specified in the notice; and

(b) those proceedings will not be raised earlier than the expiry of the period of two weeks or two months (whichever is appropriate under subsection (4) below) from the date of service of the notice.

(4) The minimum period to be specified in a notice as mentioned in subsection (3)(b) above is—

(a) two months if the notice specifies any of Grounds 1, 2, 5, 6, 7, 9 and 17 in Schedule 5 to this Act (whether with or without other grounds); and

(b) in any other case, two weeks.

(5)

(6) Where a notice under this section relating to a contractual tenancy—

(a) is served during the tenancy; or

(b) is served after the tenancy has been terminated but relates (in whole or in part) to events occurring during the tenancy,

the notice shall have effect notwithstanding that the tenant becomes or has become tenant under a statutory assured tenancy arising on the termination of the contractual tenancy.

(7) A notice under this section shall cease to have effect 6 months after the date on or after which the proceedings for possession to which it relates could have been raised.

Schedule 5

Ground 12

Some rent lawfully due from the tenant—

(a) is unpaid on the date on which the proceedings for possession are begun; and

(b) except where subsection (1)(b) of section 19 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.

Ground 13

Any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed.

Ground 14

The condition of the house or of any of the common parts has deteriorated owing to acts of waste by, or the neglect or default of, the tenant or any one of joint tenants or any person residing or lodging with him or any sub-tenant of his; and, in the case of acts of waste by, or the neglect or default of, a person lodging with a tenant or a sub-tenant of his, the tenant has not, before the making of the order in question, taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant.

In this Ground, “the common parts” means any part of a building containing the house and any other premises which the tenant is entitled under the terms of the tenancy to use in common with the occupiers of other houses.

Ground 15

The tenant, a person residing or lodging in the house with the tenant or a person visiting the house has—

(a) been convicted of—

(i) using or allowing the house to be used for immoral or illegal purposes; or

(ii) an offence punishable by imprisonment committed in, or in the locality of, the house; or

(b) acted in an anti-social manner in relation to a person residing, visiting or otherwise engaging in lawful activity in the locality; or

(c) pursued a course of anti-social conduct in relation to such a person as is mentioned in head (b) above.

In this Ground “anti-social”, in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance, “conduct” includes speech and a course of conduct must involve conduct on at least two occasions and “tenant” includes any one of joint tenants.”

The Cost of Living (Tenant Protection) (Scotland) Act 2022 is also relevant to this application, it having been received by the Tribunal after 28 October 2022.

Findings in Fact and Law

- 7 The tenancy between the Applicants and the Respondent is a statutory assured tenancy as defined by section 12 of the Housing (Scotland) Act 1988.
- 8 The Applicants gave the Respondent notice of the terms of the tenancy which was signed by both parties on 2 February 2010 and 3 March 2010.
- 9 On 23 February 2023 the Applicants delivered a Form AT6 Notice under section 19 of the Housing (Scotland) Act 1988 citing grounds 12, 13, 14 and 15 of Schedule 5 of the Housing (Scotland) Act 1988 and confirming that proceedings would not be raised any earlier than 13 March 2023.
- 10 The rent for the property is £549 per month.
- 11 The Respondent receives housing benefit which currently meets the monthly rent.
- 12 The Respondent is in arrears in the sum of £554.
- 13 The Respondent has persistently refused access to the Applicants to carry out inspections and repairs. As a result the condition of the property continues to deteriorate. The property is suffering from damp and requires urgent repairs.
- 14 The Applicants applied to the Tribunal for a right of entry as a result of the Respondent’s refusal to allow access. The application was granted and access was gained on 16 February 2023 for a period of five minutes. The Applicants submitted a further application for right of entry to the Tribunal on 21st March

2023 to facilitate repairs. The Respondent denied access on health grounds but provided no evidence to support this.

- 15 The Respondent's correspondence with the Applicants is intimidating and constitutes harassment. The Respondent has made false allegations about the Applicants in his correspondence with the Tribunal regarding the right of entry applications.
- 16 It is reasonable to make the order sought by the Applicants.
- 17 The provisions of section 18 of the Housing (Scotland) Act 1988 have been met.

Reasons for Decision

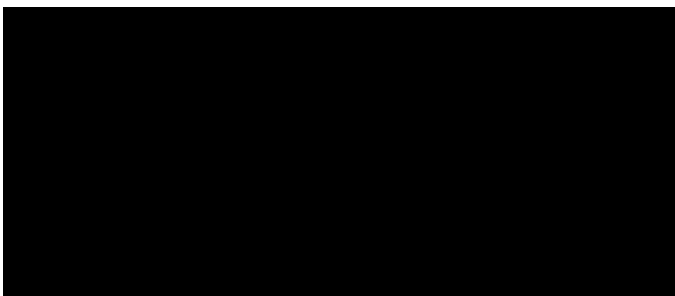
- 18 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Respondent had been made aware of the application and had been given the opportunity to submit representations and attend the Case Management Discussion. He had failed to do either.
- 19 The Tribunal was satisfied that the Respondent had been served with a Form AT6 seeking recovery of possession on the basis of grounds 12, 13, 14 and 15. There was no requirement to serve a Notice to Quit as the property was let on a statutory assured tenancy.
- 20 The Tribunal accepted the situation outlined by the Applicants, on the basis that they were wholly credible in their submissions and there was nothing before the Tribunal to contradict their evidence. They had submitted a significant amount of documentation in support of their case.
- 21 The Tribunal was therefore satisfied that the Respondent was in rent arrears in the sum of £554, that he continued to deny access for repairs to be carried out, that as a result the condition of the property was deteriorating and that his correspondence with the Applicants was such that it amounted to antisocial conduct in terms of the aggressive and intimidating tone of his communication. The Tribunal noted that he had mentioned suffering from health issues but there was nothing before the Tribunal to evidence this. The Tribunal therefore considered that the prejudice to the Applicants in the Respondent's continued occupation of the property outweighed any prejudice to the Respondent in granting an eviction order. It was clear that were the tenancy to continue it would be detrimental to the Applicants, and those living in the vicinity of the property, as the condition of the property would continue to deteriorate. It was clear that the Respondent had no intention of allowing access and the Applicants had made efforts prior to seeking repossession to gain entry by applying twice to

the Tribunal for support in this regard. The Tribunal was therefore satisfied that the application before it was very much a last resort on their part.

- 22 It should be noted that this was also an application to which the Cost of Living (Tenant Protection) (Scotland) Act 2022 applies. As at the time of writing this prevents any action being taken to enforce the eviction order prior the earlier of (a) the day following the end of a period of 6 months beginning with the day on which this order was granted as specified above, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 which is the 30 September 2023. The Respondent would therefore have a lengthy period of time to move out of the property and into alternative accommodation.
- 23 Taking all of the above into account the Tribunal determined that the grounds relied upon by the Applicants had been met and it would be reasonable in all the circumstances of this particular case to make the order.
- 24 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.



25 July 2023

Legal Member/Chair

Date

