



**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**

**Chamber Ref: FTS/HPC/EV/19/0564**

**Re: Property at 678 Old Dalkeith Road, Danderhall, Edinburgh, EH22 1RR (“the  
Property”)**

**Parties:**

**Drum Farm LLP, 684 Old Dalkeith Road, Edinburgh, EH22 1RR (“the Applicant”)**

**Mr Steven Waddell, 678 Old Dalkeith Road, Danderhall, Edinburgh, EH22 1RR  
 (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the Applicant was entitled to an order for possession  
of the property and the removal of the Respondent from the property**

**Background**

1. By application dated 14 February 2019 the Applicant’s representatives Flexlaw Solicitors, Edinburgh applied to the Tribunal for an order for possession of the property in terms of Section 18(1) of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Applicant’s representatives submitted a copy of the lease, a Section 33 Notice, a Notice to Quit, copy form AT6, Certificate of Intimation by Sheriff Officers, Statement of Rent arrears, Notice to Local Authority and letter of authority.
2. By notice of Acceptance dated 9 March 2019 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.

3. A Case Management Discussion was held at Edinburgh on 7 June 2019 at which both parties were represented. The Respondent's representative submitted written representation on behalf of the Respondent in advance of the Case Management discussion. Having considered the representations made on behalf of both parties a hearing was assigned to take place on 6 August 2019.
4. The Respondent's representative applied to the Tribunal for a postponement of the hearing assigned for 6 August 2019 which was granted and a further hearing assigned to take place on 30 August 2019.
5. The Respondent's representative submitted a further postponement request which was granted and the hearing on 30 August 2019 was adjourned.
6. By email dated 23 September 2019 the Respondent's representative intimated her withdrawal from acting on the Respondent's behalf. A further hearing was assigned to take place on 10 October 2019.
7. Following representations from the Applicant's representative the hearing assigned for 10 October 2019 was converted to a Case Management Discussion.
8. A Case Management discussion was held at Edinburgh on 10 October 2019 and was adjourned to a further Case Management discussion to take place on 20 November 2019 to further consider the Respondent's capacity.
9. A Case Management discussion was held at Edinburgh on 20 December 2019 in light of information provided to it a further Case Management discussion was assigned to take place on 18 February 2020 and the Tribunal issued Directions to Midlothian Council to provide information to the Tribunal in respect of the Respondent and to have a representative attend at the Case Management discussion on 18 February 2020.
10. A further Case Management Discussion was held at Edinburgh on 18 February and the application was continued for a report on the Respondent's capacity by a psychiatrist instructed by Midlothian Council.
11. A Case Management Discussion assigned for 26 March 2020 was adjourned due to the Covid-19 outbreak and a further Case Management Discussion assigned to take place by teleconference on 9 July 2020.
12. The Tribunal issued Directions to Midlothian Council in advance of the Case Management Discussion.
13. Midlothian Council submitted written representations by email dated 26 June 2020.

14. A Case Management discussion was held by teleconference on 9 July 2020. The Applicant was represented by Mr Harrison of Flexlaw Solicitors Edinburgh. The Respondent did not attend and was not represented. In light of the written submissions previously lodged on behalf of the Respondent the Tribunal continued the application to a further Case Management Discussion to allow the Applicant's representative to lodge submissions on the legal issues raised and also for the Respondent to confirm whether the property remained his principal place of residence and to provide further written submissions in support of his claim for an abatement of rent and the other issues raised on his behalf.
15. By email dated 21 July the Applicant's representatives submitted written representations in response to the submissions made previously on behalf of the Respondent.
16. The Respondent did not submit any further written representations.

### **The Case Management Discussion**

17. A Case Management Discussion was held by teleconference on 24 August 2020. The Applicant was represented by one of its principals Mr Alan More-Nisbet and its property manager Ms Sheila Johnston was also in attendance. The Respondent did not attend and was not represented. The Tribunal determined to proceed in the absence of the Respondent.
18. Mr More-Nisbet advised the Tribunal that he had expected Mr Harrison of Flexlaw Solicitors to be present but had been unable to contact him. The Tribunal confirmed it had received written submissions in advance of the Case Management Discussion from Mr Harrison and was in a position to proceed in his absence on the basis of these submissions if Mr More-Nisbet wished. It was agreed that the Case Management discussion should go ahead.
19. Mr More Nisbet explained that he had good reason to believe that the Respondent had vacated the property there had been no sign of the Respondent there for some months. Mr Harrison had been going to take statements from the neighbours who could confirm the position. The garden was overgrown. The chickens had been removed He believed the Respondent might be living with his sister near Loanhead.
20. The Tribunal considered the legal issues addressed by Mr Harrison in his written submissions and indicated it found these to be correct in law.
21. The Tribunal heard from Mr More-Nisbet that the rent due by the Respondent had been agreed at £350.00 per month. At the time of sending the Form AT6 there had been more than 3 months rent due. He confirmed that when the application to the Tribunal was made in February 2019 the rent due had increased to £3352.52 and that no rent had been paid by the Respondent since then. There was therefore still more than 3 months rent due by the Respondent.

22. With regards to Ground 13 of Schedule 5 of the 1988 Act Mr More-Nisbet explained that when the Respondent had kept chickens in the garden of the property in breach of the tenancy agreement there had been complaints from neighbours about rats infesting the property. Subsequently he had discovered that the Respondent had moved the chickens indoors and was keeping the chickens as pets. On a visit to the property he had discovered a large bale of straw inside the property. Chickens had climbed into the attic of the property and were roosting in the insulation. There were droppings throughout the property constituting a health hazard. Ms Johnston said she had seen photographs of the chickens inside the property on the Respondent's Facebook page.

23. Mr More-Nisbet asked the Tribunal to grant the order sought.

### **Findings in Fact**

24. There was an assured tenancy agreement in place between the parties.

25. The agreed rent was £350.00 per month.

26. A Notice to Quit was served on the Respondent by Sheriff Officers on 16 November 2018 to remove from the property on or before 1 February 2019.

27. A Form AT6 was served on the Respondent by Sheriff Officers on 16 November 2018 advising that proceedings under grounds 8, 11, 12 and 13 would not be raised with the Tribunal before 2 February 2019.

28. A Section 11 Notice was sent to Edinburgh Council on 14 February 2019.

29. As at 16 November 2018 the Respondent had accrued rent arrears of £2202.52.

30. As at 14 February 2019 the rent arrears had increased to £3352.52.

31. As at the date of the Case Management Discussion on 24 August 2020 no further rent payments have been made by the Respondent and the rent due has increased by a further £6300.00.

32. The Respondent kept chickens both outside the property and inside without the consent of the Applicant.

### **Reasons for Decision**

33. The Tribunal was conscious of the fact that the Respondent had at least at some points in the progression of this application suffered from some form of mental disability that had led to adjournments on a number of occasions. However from the information provided by Midlothian Council Social Work

Department insofar as it could disclose information to the Tribunal it appeared that there were no grounds for seeking an order in respect of the Respondent under the Adults With Incapacity (Scotland) Act 2000 or in respect of providing advocacy services under the Adult Support and Protection (Scotland) Act 2007. The Tribunal was therefore satisfied that the Respondent had sufficient capacity to represent himself or instruct representation on his behalf.

34. The Tribunal could not be absolutely certain that the Respondent had vacated the property on a permanent basis although from the oral submissions it seemed that he had not been present at the property for many months. The Tribunal was of the view that the Respondent was aware of the proceedings and could have made enquiries with the Tribunal administration if he had temporarily vacated the property.
35. The Tribunal was satisfied from the submissions made on behalf of the Applicant by the Applicant's representatives that by serving a Notice to Quit to end the contractual tenancy on 1 February 2019 the applicant was acting in compliance with the terms of the terms of the tenancy agreement and that thereafter a statutory tenancy was created. As there was a statutory tenancy in place on the date on which the Applicant could raise proceedings before the Tribunal the grounds on which the application was proceeding did not require to be repeated in the tenancy agreement and the issues raised in *Royal Bank of Scotland v Boyle* 1999 Hous LR 63 do not apply.
36. The Tribunal was satisfied that the Respondent had been given an opportunity to expand on his submissions with regards to having an entitlement to an abatement of rent due to outstanding repairs at the property but had failed to provide the Tribunal with adequate information to support his claim and it concluded that it was without merit.
37. The Tribunal was satisfied from the documents provided and the oral submissions that the Respondent was due rent amounting to £9652.52. The Tribunal was satisfied that the terms of Grounds 8, 11 and 12 of Schedule 5 of the 1988 Act had been met. As Ground 8 was a mandatory ground there being more than 3 months rent due both at the date of service of the AT6 and at the date of the Case Management Discussion the Tribunal was obliged to grant the order sought. In any event in all the circumstances given that the Respondent may well have removed himself from the property it was also reasonable to grant the order under grounds 11 and 12. Furthermore the Tribunal was satisfied that the Respondent had kept chickens both inside and outside the property in breach of a condition of the tenancy agreement without the consent of the Applicant and that that it was given the rat infestation and the health concerns expressed by the Applicant reasonable to also grant the order under Ground 13 of Schedule 5.

## **Decision**

38. Having fully considered the written submissions made on behalf of both parties together with the oral submissions and having considered it had sufficient information before it to make a decision without the need for a hearing the Tribunal determined that the Applicant was entitled to an order for possession of the property and the removal of the Respondent from the property.

### **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.**

Graham Harding  
**Legal Member/Chair**

24 August 2020  
**Date**