



**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/20/1408**

**Re: Property at 60 Castlegait, Lanark, ML11 9EF (“the Property”)**

**Parties:**

**Mrs Mary Hughes, 49 Albany Drive, Lanark, ML11 9AF (“the Applicant”)**

**Ms Amanda Hannah McKenzie, 60 Castlegait, Lanark, ML11 9EF (“the Respondent”)**

**Tribunal Members:**

**Fiona Watson (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that order is granted against the Respondent for possession of the Property under section 18 of the Housing (Scotland) Act 1988.**

- Background
  1. An application dated 24 June 2020 was submitted to the Tribunal under Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a repossession order against the Respondent upon termination of a short assured tenancy agreement.
- The Case Management Discussion
  2. A Case Management Discussion took place on 29 September 2020 by tele-conference. The Applicant was personally present and represented herself. There was no appearance by or on behalf of the Respondent. The application had been intimated on the Respondent by Sheriff Officer on 1 September 2020. The Tribunal was accordingly satisfied that the Respondent had been duly notified of the date and time of the CMD and that the CMD could proceed in the Respondent’s absence.

3. The Applicant sought an Order for Repossession of the Property. A Notice to Quit and Form AT6 dated 20 March 2020 had been served on the Respondent by Recorded Delivery post. The Form AT6 was served on the basis of Ground 6 under Schedule 5 to the Housing (Scotland) Act 1988 (“the 1988 Act”). In terms of Ground 6, the Applicant intends to carry out substantial reconstruction works to the property which would involve knocking down the property (which is a single storey stone cottage) and building a two storey house on the land. It was not possible for the Respondent to continue to occupy the property whilst said works were carried out. A letter from Racing Property Limited was lodged with the application and which confirmed their instruction in providing management services in connection with the proposed redevelopment works.

- Findings in Fact

4. The Tribunal made the following findings in fact:

- (i) The parties entered into an Assured Tenancy Agreement (“the Agreement”) which commenced 1 October 2017;
- (ii) A Notice to Quit and Form AT6 under section 19 of the 1988 Act were served on the Respondent on 20 March 2020 by recorded delivery post;
- (iii) The Notice to Quit required the Respondent to remove from the Property by 30 May 2020;
- (iv) The Form AT6 under section 19 of the 1988 Act relied on ground 6 under Schedule 5 to the 1988 Act;
- (v) The Form AT6 under section 19 of the 1988 Act advised that proceedings would not be raised before 31 May 2020;
- (vi) The Applicant intends to carry out extensive works to the property which would involve demolition of the existing building and which works cannot be carried out with the tenant remaining in occupation of the property;
- (vii) The Respondent has failed to remove from the Property and continued to reside therein.

- Reasons for Decision

5. Section 18 of the 1988 Act states as follows:

*18 (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.*

*(3) If the First-tier Tribunal 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) below, the Tribunal shall make an order for possession.*

*(3A) If the First-tier Tribunal 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, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.*

*(4) If the First-tier Tribunal is satisfied that any of the grounds in Part 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 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.*

*(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 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 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 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.*

6. Ground 6 of Schedule 5 to the 1988 Act states as follows:

*The landlord who is seeking possession or, where the immediate landlord is a registered housing association within the meaning of the Housing Associations Act 1985, a superior landlord intends to demolish or reconstruct the whole or a substantial part of the house or to carry out substantial works on the house or any part thereof or any building of which it forms part and the following conditions are fulfilled (and in those conditions the landlord who is intending to carry out the demolition, reconstruction or substantial works is referred to as “the relevant landlord”)—*

*(a) either—*

*(i) the relevant landlord (or, in the case of joint relevant landlords, any one of them) acquired his interest in the house before the creation of the tenancy; or*

*(ii) none of the following persons acquired his interest in the house for value—*

*(A) the relevant landlord (or, in the case of joint relevant landlords, any one of them);*

*(B) the immediate landlord (or, in the case of joint immediate landlords, any one of them), where he acquired his interest after the creation of the tenancy;*

*(C) any person from whom the relevant landlord (or any one of joint relevant landlords) derives title and who acquired his interest in the house after the creation of the tenancy; and*

*(b) the relevant landlord cannot reasonably carry out the intended work without the tenant giving up possession of the house because—*

*(i)the work can otherwise be carried out only if the tenant accepts a variation in the terms of the tenancy and the tenant refuses to do so;*

*(ii)the work can otherwise be carried out only if the tenant accepts an assured tenancy of part of the house and the tenant refuses to do so; or*

*(iii)the work can otherwise be carried out only if the tenant accepts either a variation in the terms of the tenancy or an assured tenancy of part of the house or both, and the tenant refuses to do so; or*

*(iv)the work cannot otherwise be carried out even if the tenant accepts a variation in the terms of the tenancy or an assured tenancy of only part of the house or both.*

7. The Tribunal was satisfied that the ground relied upon in the Form AT6 had been met. The Applicant submitted that they intend to carry out substantial reconstruction works to the property which would involve knocking down the property (which is a single storey stone cottage) and building a two storey house on the land. It was not possible for the Respondent to continue to occupy the property whilst said works were carried out. Given the extent and nature of the intended works, the Applicant cannot reasonably carry out the intended work without the tenant giving up possession of the house. A letter from Racing Property Limited was lodged with the application and which confirmed their instruction in providing management services in connection with the proposed redevelopment works. Accordingly, the Applicant was entitled to the Order for Repossession as sought.

- Decision

8. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for possession of the Property under section 18 of the Housing (Scotland) Act 1988.

## **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.**

**29<sup>th</sup> September 2020**

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**Legal Member: Fiona Watson**

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**Date**