



**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/21/0299

Re: Property at 6 Pinebank, Livingston, West Lothian, EH54 6BL (“the Property”)

Parties:

**Newport Asset Management, Firth Road, Houstoun Industrial Estate, Livingston,
EH54 5DJ (“the Applicant”)**

**Mr Damien Mrotek, Ms Justyna Hamberg, 6 Pinebank, Livingston, West Lothian,
EH54 6BL (“the Respondent”)**

Tribunal Members:

**Lesley-Anne Mulholland (Legal Member) and Jane Heppenstall (Ordinary
Member)**

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) refused to grant an order for possession.**

INTRODUCTION

1. This is an application under Section 18(1) of the Housing (Scotland) Act 1988 for an order for possession in relation to a short-assured tenancy under Ground 15 of Schedule 5.
2. The respondents are joint tenants. They entered into a short-assured tenancy agreement on the 8 July 2017. The applicant seeks an order for possession on the basis of the respondents anti-social behaviour.

3. A two-member case management discussion took place at 10.00 am on 28 May 2021 by teleconference. The applicant's representative, Mr Allan joined the discussion.
5. The respondents have failed to engage with the application. We decided to continue with the discussion in their absence after satisfying ourselves that the papers had been properly served on the respondents and that they were notified of today's Case Management Discussion.
6. We considered the following documents lodged with the application:
 - a) Application for an order for possession.
 - b) Copy Tenancy Agreement
 - c) Copy AT6 Notice.
 - d) Notice to Quit dated 21 December 2020 giving notice to leave by 8 February 2021.
 - e) Recorded Delivery slip and
 - f) Section11 Notice.
7. Since the coming into force of the Coronavirus (Scotland) Act 2020, all eviction grounds are discretionary. We must be satisfied that it is reasonable to grant the order.
8. The relevant period of notice under Ground 15 is 28 days. We are satisfied that proper notice has been given.
9. It is helpful to set out here the terms of Schedule 5, Ground 15:

'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.'

10. Mr Allan informed us that the respondents have been using the property as a tattoo parlour. The matter was reported to Police Scotland who charged the first respondent and the matter was referred to the Procurator Fiscal. The Procurator Fiscal has not issued proceedings to date against the first respondent. It is Mr Allan's position that the respondents have acted anti socially by carrying out an unlawful business on the premises which were not let for that purpose. A license is required in order to run a tattoo parlour and the respondents do not have a license. The carrying on of this activity without a licence amounts to criminal activity. There are general health and safety concerns for those attending tattoo parlours without licence.
11. We asked Mr. Allan whether he had any information to show that neighbours or those in the local area had complained about the property being used in this way. He did not have any information from neighbours and did not know the number of times the property was used as a tattoo parlour, the number of persons entering and exiting it for the purpose of accessing the parlour or the duration in which the respondents had operated a tattoo parlour within the property.
12. Mr. Allan informed us that the respondents have not paid rent since March 2020, however we do not have an application before us for an order for possession on the basis of rent arrears. Accordingly, we have not taken this into account before reaching our decision.
13. Having considered the terms of Ground 15, alongwith all the papers before us and oral arguments made, we are not satisfied that the applicant has provided a sufficiency of evidence to demonstrate that the respondents have pursued a course of anti-social conduct. Mr. Allan has been unable to demonstrate that the use of the property as a tattoo parlour has caused or is likely to cause alarm, distress, nuisance or annoyance, or that such conduct has occurred on at least two occasions.

14. Accordingly, we decided to refuse to grant an Order for Possession.

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.

Legal Member/Chair

**28 May 2021
Date**