

**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/21/1997**

**Re: Property at 124 Stewarton Street, Wishaw, ML2 8AG (“the Property”)**

**Parties:**

**Ms Alicia Main, 46 Buchan Street, Wishaw, ML2 7HU (“the Applicant”)**

**Mr John Anderson, Unknown, Unknown (“the Respondent”)**

**Tribunal Members:**

**Andrew Upton (Legal Member) and Mary Lyden (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondent in favour of the Applicant**

**STATEMENT OF REASONS**

1. This Application called for its Case Management Discussion by teleconference call on 19 January 2022, together with the related application EV/21/1998. The Applicant was represented by Mrs Hogg, solicitor. The Respondent was neither present nor represented on the call.
2. Previous attempts to serve the Application on the Respondent had been unsuccessful. As such, service of the Application and details of the CMD were made by website advertisement. At the beginning of the CMD, the Tribunal asked Mrs Hogg to explain the Applicant’s understanding of the Respondent’s continued possession. Mrs Hogg advised that the Applicant had taped a notice to the door of the property stating that it had been suggested that the Respondent had vacated the property and calling upon the Respondent, if that were not the case, to contact her. She also applied tape across the lock on the door and over the door seals. She received no contact from the

Respondent. When she returned to the property a week later, the tape had been broken, indicating that access had been taken to the property. That access could only have been by the Respondent or someone acting on his behalf or with his authority. Mrs Hogg also advised that the Applicant had made her own enquiries with neighbours who told her that they had not seen the Respondent for some time, but that unknown persons had been seen entering the property on a frequent basis. Against that background, the Applicant's position was that the Respondent remained in possession of the property but was no longer residing there, and that the Applications required to proceed. The Tribunal accepted that submission.

3. In this Application, the Applicant seeks an eviction order under section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act"). Specifically, she claims that grounds 12, 13 and 15 of Schedule 5 to the 1988 Act are established for the following reasons:-
  - a. The Respondent was in rent arrears of £75 when the notice under section 19 of the 1988 Act was served on the Respondent, was in rent arrears of £650 when proceedings were raised, and is in rent arrears of £775 as at the date of the CMD;
  - b. The Respondent has failed to maintain the property in accordance with his contractual obligations; and
  - c. The Respondent has acted in an anti-social manner towards his neighbours.
4. In support of the Application, the Applicant has supplied a rent schedule showing rent arrears, at the point of raising the Application, of £650. Mrs Hogg confirmed that arrears had continued to accrue since then at a rate of £25 per calendar month. That is because the rent is £325 per month, and the Respondent's housing benefit payment is £300 per month paid to the Applicant directly.
5. In further support of the Application, the Applicant has provided photographs of the Property showing damage to a UPVC door. The Applicant has also provided video clips showing damage to a bathroom doorframe, damage to the toilet, and refuse throughout the property.
6. The Applicant has also produced a copy of a letter from North Lanarkshire Council dated 21 April 2021, in terms of which the local authority confirms that it has received, through one of its elected members, complaints from two neighbours of anti-social behaviour. The local authority also confirmed that the Respondent had received a Fixed Penalty Notice from Police Scotland for using the property as a "drinking den" in contravention of the public health protection measures put in place by the Scottish Government to combat the spread of Covid-19. The local authority concluded that it was issuing a First Written Warning.
7. Mrs Hogg invited the Tribunal to grant the order sought in this Application. She submitted that grounds 12, 13 and 15 for eviction were satisfied and that

it was reasonable to grant the order. The Respondent lives alone at the property. He has no known dependants. He has no known disabilities, and the property has not been adapted for his use. The Applicant is unaware of any specialist services that the Respondent accesses locally. Rent arrears continue to accrue. There is evidence of anti-social behaviour being undertaken from the property. That anti-social behaviour, in addition to being a nuisance to neighbours, puts the Applicant at risk of enforcement action from the local authority. The property is at risk of dilapidation due to the Respondent's failure to meet his contractual obligations. In all of the circumstances, Mrs Hogg submitted that the balance of reasonableness favoured granting an order for possession.

8. In terms of Rule 2 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017, the Tribunal is required when making a decision to have regard to the overriding objective to deal with proceedings justly, including by avoiding unnecessary delay. In terms of Rule 17(4), the Tribunal may do anything at a CMD that it may do at a Hearing, including making a final decision in the case.
9. The Respondent has been properly served with a copy of these proceedings by advertisement on the Tribunal website in accordance with the Rules of Procedure. He has failed to attend at the CMD to dispute the assertions made by the Applicant in the Application. The Tribunal accordingly considers that it has received sufficient unchallenged evidence and submissions to determine this case without a Hearing.
10. In terms of the Housing (Scotland) Act 1988:-

*“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.
- (3) [...]
- (3A) [...]
- (3B) Subsection (3C) applies where the First-tier Tribunal is satisfied—
  - (a) that Ground 8 in Schedule 5 is established, and
  - (b) that all or part of the rent in respect of which the tenant is in arrears as mentioned in that Ground relates to the period during which paragraph 4 of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020 is in force.
- (3C) Where this subsection applies, in considering for the purposes of subsection (4) (as applied in accordance with the modification made by paragraph 3(2)(b) of schedule 1 of the Coronavirus (Scotland) Act 2020) whether it is reasonable to make an order for possession against the tenant, the First-tier Tribunal is to consider the extent to which the landlord has complied with pre-action requirements before raising the proceedings for possession.

- (4) If the First-tier Tribunal is satisfied that any of the grounds in Part I or 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 8 in Part I of Schedule 5 to this Act or 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.

- (9) In subsection (3C), "*pre-action requirements*" means such requirements as the Scottish Ministers may specify in regulations.
- (10) Regulations under subsection (9) may in particular make provision about—
  - (a) information to 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 to 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.
- (11) Regulations under subsection (9) are subject to the affirmative procedure.

*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 28 days, two months, three months or, as the case may be, six months (whichever is appropriate under subsection (4) or (4A) below) from the date of service of the notice.
- (4) The minimum period to be specified in a notice served before 3 October 2020 as mentioned in subsection (3)(b) is—
  - (a) two months if the notice specifies only Ground 9 in Part II of Schedule 5 to this Act,
  - (b) three months if the notice specifies any of the following grounds in Schedule 5 to this Act (whether with or without also specifying the ground referred to in paragraph (a))—
    - (i) Ground 1 in Part I,
    - (ii) Ground 15 in Part II,
  - (c) six months if the notice specifies any of the following grounds in Schedule 5 to this Act (whether with or without other grounds)—
    - (i) Grounds 2 to 8 in Part I,
    - (ii) Grounds 10 to 14 in Part II,
    - (iii) Ground 16 or 17 in Part II.
- (4A) The minimum period to be specified in a notice served on or after 3 October 2020 as mentioned in subsection (3)(b) is—

- (a) 28 days if the notice specifies only Ground 15 in Part II of Schedule 5 to this Act,
  - (b) two months if the notice specifies Ground 9 in Part II of Schedule 5 to this Act (whether with or without also specifying the ground referred to in paragraph (a)),
  - (c) three months if the notice specifies Ground 1 in Part I of Schedule 5 to this Act (whether with or without also specifying either or both of the grounds referred to in paragraphs (a) and (b)),
  - (d) six months if the notice specifies any of the following grounds in Schedule 5 to this Act (whether with or without other grounds)—
    - (i) Grounds 2 to 8 in Part I,
    - (ii) Grounds 10 to 14 in Part II,
    - (iii) Ground 16 or 17 in Part II.
- (5) The First-tier Tribunal may not exercise the power conferred by subsection (1)(b) above if the landlord seeks to recover possession on Ground 8 in Schedule 5 to this Act.
- (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.

### **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 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.”

11. Having considered the Application and supporting material, and heard the submissions of the Applicant’s representative, the Tribunal is satisfied that grounds 12, 13 and 15 of Schedule 5 to the 1988 Act are satisfied. The only question remaining for the Tribunal is whether it is reasonable to grant the order.
12. The Tribunal is required to have regard to all circumstances associated with the case. Having heard from the Applicant’s Representative, the Tribunal is satisfied that there is no special circumstance which ties the Respondent to the property. It is clear that the Applicant is likely to suffer financial loss, property damage and continued risk of regulatory enforcement if an order for possession is not granted. For those reasons, the Tribunal is satisfied that it is reasonable to grant the eviction order.

### **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.**

A. Upton

19 January 2022

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**Legal Member/Chair**

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**Date**