



**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/21/2506

**Re: Property at First and Second Floor Flat, 57 Evan Street, Stonehaven,
Aberdeenshire, AB39 2HR (“the Property”)**

Parties:

**Funeral Services Limited, 1 Angel Square, Manchester, M60 0AG (“the
Applicant”)**

**Mr Robert Gunn, First and Second Floor Flat, 57 Evan Street, Stonehaven,
Aberdeenshire, AB39 2HR (“the Respondent”)**

Tribunal Members:

Andrew Upton (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of the Respondent)

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

STATEMENT OF REASONS

1. This Application called for its Case Management Discussion by teleconference on 23 December 2021, together with the related case CV/21/2507. The Applicant was represented by Mr MacPherson, solicitor. The Respondent was neither present nor represented on the call.
2. In this Application, the Applicant seeks the grant of an eviction order. It says that the tenancy between the parties commenced in 2003 and is an Assured Tenancy. It says that it served Notice to Quit in the prescribed form and dated 13 January 2021 on the Respondent. It says that it also served notice in Form AT6 and also dated 13 January 2021 on the Respondent, giving notice of its intention to raise proceedings based on Grounds 8, 11 and 12 of Schedule 5

to the Housing (Scotland) Act 1988. It says that, at the date of serving the AT6, the Respondent was in rent arrears of £6,000, which was a sum in excess of three months' rent. The monthly contractual rent was £400. At the date of raising this Application, the Applicant says that the rent arrears had increased to £9,600. The Applicant says that those arrears remain unpaid. The Applicant also sets out the steps that were taken to comply with the Pre-Action Requirements set out in Regulation 3 of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.

3. In terms of Rule 17(4) the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017, the Tribunal may do anything at a CMD that it may do at a Hearing, including make a decision. In terms of Rule 2, 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.
4. The Respondent was served with a copy of the Application. He has been afforded an opportunity to dispute the allegations made against him by the Applicant. He has chosen not to do so. In the circumstances, the Tribunal has determined that the allegations made by the Applicant in the Application are not in dispute.
5. In terms of the Housing (Scotland) Act 1988 (as temporarily amended by the Coronavirus (Scotland) Act 2020):-

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.

Sch.5, Ground 8

Both at the date of the service of the notice under section 19 of this Act relating to the proceedings for possession and at the date of the hearing [or the date of the case management discussion, whichever is the earlier]¹ , at least three months rent lawfully due from the tenant is in arrears.

Sch.5, Ground 11

Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.

Sch.5, Ground 12

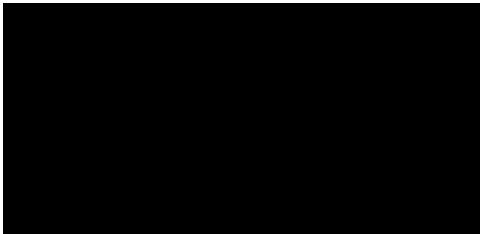
Some rent lawfully due from the tenant—

- (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.

6. The Tribunal is satisfied that:- (i) the Respondent is in rent arrears for the period up to the raising of the Application in the sum of £9,600; (ii) this represents sum in excess of three months' rent arrears; (iii) those arrears are the result of persistent failure to pay rent; (iv) the said arrears remain unpaid; and (v) it is reasonable, in all of the circumstances, that an eviction order be granted under Grounds 8, 11 and 12 of Schedule 5 to the 1988 Act. The Tribunal therefore granted 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.



23/12/21

Legal Member/Chair

Date