



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/EV/22/0240

**Re: Property at Cleckmay, East Garleton Farm, Drem, North Berwick, EH39
5BB (“the Property”)**

Parties:

**John Shedden and Partners, East Garleton Cottages, Drem, EH39 5BB (“the
Applicant”)**

**Mr Brian Whellans, Cleckmay, East Garleton Farm, Drem, North Berwick, EH39
5BB (“the Respondent”)**

Tribunal Members:

Virgil Crawford (Legal Member) and Angus Lamont (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that**

BACKGROUND

1. The Applicants are the proprietors of the Property. The Property forms part of a larger area of farmland. The Applicants have recently acquired the interest of owners of the Property from previous owners;
2. The Respondent was a worker within the farm. As part of his employment he was provided with a house within the farm grounds. His employment commenced on 1st June 1992 at which point he occupied a different property within the farm grounds;
3. In 1999 the Applicant moved from his previous dwelling to the Property at Cleckmay within the farm grounds;

4. The Respondent has never paid rent in relation to the Property;
5. The Respondent no longer requires to reside in the property in connection with his employment;
6. The Applicants have recently purchased the farm. As part of the purchase process they have been required, or at least it is beneficial to them, to dispose of certain properties within the farm grounds, including the one the subject of these proceedings;
7. For the avoidance of any doubt, there has never been a written lease between the Parties in relation to the Property and, as stated, no rent has ever been paid;
8. On 6th July 2021, the Applicant served a Notice to Quit and a Notice in terms of section 19 of the Housing (Scotland) Act 1988 (commonly referred to as a Form AT6) upon the Respondent. The AT6 advised that the Applicants were seeking recovery of possession of the Property in terms of Ground 6 of Schedule 5 of the Housing (Scotland) Act 1988 ("the 1988 Act"), that being on grounds that the Applicants intended to carry out substantial works on the house or any part thereof or any building of which it forms part and, in essence, the work cannot reasonably be carried out without the tenant giving up possession of the property;
9. A Notice in terms of section 11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the relevant local authority;
10. After the expiry of the period of notice in the Notice to Quit and AT6 the Applicants presented an application to the Tribunal seeking an order for eviction;

THE CASE MANAGEMENT DISCUSSION

11. The Case management Discussion was conducted by teleconference. Applicants were represented by Mr C McLeod of Messrs Garden Stirling Burnett, Solicitors, Haddington. Mr and Mrs Shedden, the Applicants, attended also. The Respondent also participated;
12. The Tribunal asked to be address on two specific matters as follows:-
 - a. Is there a tenancy?
 - b. Even if there is, do the proposed works justify an order being granted in terms of Ground 6 of Schedule 5 of the 1988 Act?
13. Mr McLeod suggested that there was a tenancy. He advised that Mr Whellans has been occupying the property which was originally provided to

him as part of his employment. It was accepted, however, that no rent has ever been paid by Mr Whellans in relation to the property;

14. In relation to the proposed works, the Tribunal pointed out that the proposed works appeared to be nothing more than stripping out and refitting a utility room within the property. An estimate of cost had been provided by a contractor, the quotation also briefly detailing the work which was replastering walls, fitting 3 spotlights (presumably in the roof) reinstalling the utility room and reconfiguring pipework at the boiler for a good finish, reconfiguring the waste pipe to allow a washing machine to sit back to the wall and altering the hot and cold and waste supplies to the sink and washing machine;
15. The Tribunal commented that this type of work appeared to be work which is regularly undertaken in many properties throughout the country and appears to be no different from, for example, a person having a new bathroom fitted or having a kitchen replaced. Such works are often done while persons remain within a property, whether that be a tenanted or an owned property. The Tribunal also queried whether or not the work would require recovery of possession having regard to its nature and extent?
16. Mr McLeod suggested that, if a Hearing was fixed and evidence was allowed to be led, the contractor could perhaps provide further detail as to the work to be done. Mr Shedden indicated that he would wish to provide further information and commented that, in addition to this work, the Property was a wooden framed property and some parts of the external wood was rotting and required to be replaced and, in addition, work was required to the external soil/septic pipes which affected another property as well as this one. He suggested that there were significant works;
17. The Tribunal pointed out that, at an earlier stage in the proceedings, a direction had been issued by the Tribunal, the direction being dated 18th March 2022, requesting further information from the contractor and this had not been provided in advance of the Case Management Discussion;
18. The Respondent intimated that he had no objection to an eviction order being granted, intimating that he wished such an order to assist him in his dealing with the local authority in his attempts to be allocated his own local authority tenancy;

FINDINGS IN FACT

19. The Tribunal found the following facts to be established:-
 - a) The Applicants are the proprietors of the Property. The Property forms part of a larger area of farmland. The Applicants have recently acquired the interest of owners of the Property from previous owners;

- b) The Respondent was a worker within the farm. As part of his employment he was provided with a house within the farm grounds. His employment commenced on 1st June 1992 at which point he occupied a different property within the farm grounds;
- c) In 1999 the Applicant moved from his previous dwelling to the Property at Cleckmay within the farm grounds;
- d) The Respondent has never paid rent in relation to the Property;
- e) The Respondent no longer requires to reside in the property in connection with his employment;
- f) The Applicants have recently purchased the farm. As part of the purchase process they have been required, or at least it is beneficial to them, to dispose of certain properties within the farm grounds, including the one the subject of these proceedings;
- g) There has never been a written lease between the Parties in relation to the Property and, as stated, no rent has ever been paid;
- h) On 6th July 2021, the Applicant served a Notice to Quit and a Notice in terms of section 19 of the 1988 Act upon the Respondent. The AT6 advised that the Applicants were seeking recovery of possession of the Property in terms of Ground 6 of Schedule 5 of the 1988 Act, that being on grounds that the Applicants intended to carry out substantial works on the house or any part thereof or any building of which it forms part and the work cannot reasonably be carried out without the tenant giving up possession of the property;
- i) A Notice in terms of section 11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the relevant local authority;
- j) After the expiry of the period of notice in the Notice to Quit and AT6 the Applicants presented an application to the Tribunal seeking an order for eviction;
- k) There is no tenancy agreement between the Parties in relation to the Property;
- l) In any event, proposed works are not significant and would not justify the granting of the order sought;

REASONS FOR DECISION

20. The Tribunal concluded that it could not grant the order sought because, fundamentally, there was no tenancy in existence. The Tribunal can only deal with cases in which there is a private tenancy of some sort. In this case, there was not a tenancy. While it is accepted that Mr Whellans is in occupation of the Property and has been in occupation of the property for approximately 30 years, that, in itself, does not indicate that there is a tenancy. It simply indicates that he has been allowed to occupy the property, without payment of rent, for that period of time. In those circumstances, there being no tenancy, the Tribunal does not have jurisdiction to grant any order in relation to the Property;
21. Even if the Tribunal is incorrect on that point, the proposed works, which appear to amount to no more than stripping out and refitting a utility room within the property, do not appear to be significant works and do not appear to

be works which could only be completed if recovery of possession was granted. The works appear to be what might be considered to be relatively routine upgrading work and appear to be not much different from – and perhaps less significant, inconvenient or intrusive than - the replacement of a bathroom/toilet or the replacement of a kitchen. When the Tribunal enquired as to how long the works were likely to take, no definite answer could be given. It would seem from the contractor's estimate of costs provided, however, that the works involved were likely to take a matter of days rather than weeks or months;

22. In all the circumstances, the Tribunal concluded that, there being no tenancy, it could not grant an order and, in any event, the proposed works fell significantly short of any type of work envisaged by Ground 6 of schedule 5 of the 1988 Act.

23. While the Tribunal noted the position of the Respondent, the Tribunal cannot grant an order for the convenience of the Parties. The Tribunal must have regard to the application made and the basis upon which an order is sought. The Tribunal must apply the law to the facts of the case and can only grant an order if, as a matter of law, it can be justified. In this case, the Tribunal cannot find any legal basis for granting the order sought.

DECISION

The Tribunal dismissed the application.

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.

V Crawford

20 May 2022

Legal Member/Chair

Date