



**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/21/0225

**Re: Property at Strathalmond, Drumshoreland, Broxburn, EH52 5PG (“the
Property”)**

Parties:

**Mr Stuart Robertson, 12 Route de Peney, 1214 Vernier, Genva, Switzerland (“the
Applicant”)**

**Ms Emma Rocca, Strathalmond, Drumshoreland, Broxburn, EH52 5PG (“the
Respondent”)**

Tribunal Members:

Fiona Watson (Legal Member) and Frances Wood (Ordinary Member)

**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 27 January 2021 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 in terms of Ground 1 of Schedule 5 to the Housing (Scotland) Act 1988 (“the 1988 Act”), in that the Landlord requires the Property back in order to reside in as his only or principal home.
- The Case Management Discussion
 2. A Case Management Discussion (“CMD”) took place on 19 March 2021 by way of tele-conference. The Applicant was present and represented by Mr Harvey

of Thorley Stephenson, solicitors. The Respondent was present and represented herself.

3. An application submitted under Rule 70 under case reference FTS/HPC/CV/21/0226 was also considered by the Tribunal.
4. Mr Harvey submitted on behalf of the Applicant that the Applicant required the Property back in order that he and his family could return to Scotland and reside there. This was the only property they owned in Scotland. They had moved to the Geneva area in 2017, and let the Property to the Respondent at that point. Their daughter now has a place to study at Glasgow University and is currently studying online. She intends to commute to Glasgow from the property when face-to-face teaching resumes. They have been unable to enrol their younger son in an English-speaking school as they are unable to afford the fees. The Covid pandemic has caused a reduction in the Applicant's income, and the Applicant's wife has been unable to find work as she cannot speak French. The Applicant's parents are elderly and live in Glasgow. He is an only child. He wishes to be able to provide them with assistance and care, which cannot be achieved from Geneva. Mr Harvey submitted that in these circumstances, it was reasonable for the Applicant to have vacant possession of his property.
5. A Notice to Quit and Form AT6 were served on the Respondent in October 2020 seeking repossession of the Property. The Respondent has failed to make payment of any rent since then, the last payment being made in September 2020. This is causing the Applicant increased financial difficulty as the rent is required to fund the mortgage payments on the Property. The rent outstanding at the time of the CMD was £5,280.
6. The Respondent submitted that she had a phone call with the Applicant on 14 September 2020 during which he advised that he and his family were doing well. He indicated that he was considering re-mortgaging the Property to release some funds, and that surveyors would attend to carry out an appraisal. This took place on 24 September 2020. Thereafter the Respondent received a phone call on 11 October 2020 to advise her that notice would be served as the Applicant intended to return to Scotland. She found this upsetting as she had made the Property her home. She submitted that she and her partner have looked at other properties but had been unable to find anything suitable as they have two dogs. At the start of December 2020, she was offered a property which an acquaintance was in the processing of purchasing, as part of a buy-to-let portfolio. This has been delayed due to the death of the seller, and an application for confirmation is in the process of being submitted to enable the property to be sold by the deceased's estate. She has been told that the sale being able to proceed is imminent, but has no fixed timescale for this. She is packed up and ready to go, but cannot at this stage give a date on which she will be able to move out. The Respondent submitted that she understood that the Applicants were in fact living in Spain and questioned the verity of the statements made in the Applicant's affidavit in this regard.

7. The Respondent submitted that as regards the rental payments, she had suffered loss of income due to the pandemic and had sought assistance from the Applicant in March 2020 when he had agreed to a reduction in rental payments for April, May and June 2020. She relied on rental income received from the letting of attached stables and grazing to meet the rent. She submitted that the users of the stables had upped and left in October 2020 when they heard that the property may be sold as they feared they would be left without stabling for their horses. This had resulted in a loss of income to her. She submitted that she was earning £1100 per month and her partner was earning £1400 per month. She has continued to keep the Applicant updated with her financial position. No submissions were made as to why nothing at all has been paid since September 2020, despite the Respondent receiving an income. The Respondent confirmed that she owns a flat which is rented out to a family member. She did not want to give that tenant notice in order for her and her partner to move into it. She did not consider it to be suitable as it is a first floor flat with no garden and they have two dogs. The rental income for the flat covers her mortgage liability and little more. She submitted that she was not refusing to pay rent, she was unable to. She also said she was bearing the burden of looking after the welfare needs of two ponies left by the Applicant. She wanted to negotiate with the Applicant but there had been no negotiations.
8. The Applicant's agent submitted that it had been put to the Respondent that the original intention of the Applicant was to re-mortgage. However, due to the valuation being lower than expected, this was not an option and the decision was taken to move back to Scotland instead. The Applicant did not wish to disclose personal financial issues with the Respondent, and had no obligation to. The family had spent time in Spain for a period in the summer of 2020 where the Applicant's wife has family. Their daughter attempted to gain a place at the university in Barcelona, but was unsuccessful. They do not live in Spain currently and have no intention of living there. Their intention is to move back to Scotland and live in the Property again.

- Findings in Fact

9. The Tribunal made the following findings in fact:

- (i) The parties entered into a Short Assured Tenancy Agreement ("the Agreement") which commenced 25 March 2017;
- (ii) A Notice to Quit and Form AT6 under section 19 of the 1988 Act were served on the Respondent on 13 October 2020 by sheriff officer;
- (iii) The Form AT6 under section 19 of the 1988 Act relied on ground 1 under Schedule 5 to the 1988 Act;
- (iv) The Form AT6 under section 19 of the 1988 Act advised that proceedings would not be raised before 25 January 2021;
- (v) The Respondent had failed to remove from the Property and continued to reside therein.

- Reasons for Decision

10. 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.

11. Ground 1 of Schedule 5 to the 1988 Act states as follows:

“Not later than the beginning of the tenancy the landlord (or, where there are joint landlords, any of them) gave notice in writing to the tenant that possession might be recovered on this Ground or the First-tier Tribunal is of the opinion that it is reasonable to dispense with the requirement of notice and (in either case)—

(a) at any time before the beginning of the tenancy, the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them occupied the house as his only or principal home; or
(b) the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them requires the house as his or his spouse's or civil partner's only or principal home, and neither the landlord (or, in the case of joint landlords, any one of them) nor any other person who, as landlord, derived title from the landlord who gave the notice mentioned above acquired the landlord's interest in the tenancy for value.

12. Section 3 of Schedule 1 to the Coronavirus (Scotland) Act 2020 states:

3(1) The Housing (Scotland) Act 1988 applies, in relation to a notice served on a tenant under section 19 or 33(1)(d) of that Act while this paragraph is in force, in accordance with the modifications in this paragraph.
(2) Section 18 (orders for possession) has effect as if—
(a) subsections (3) and (3A) were repealed,
(b) in subsection (4), for "Part II" there were substituted "Part I or Part II",
(c) in subsection (4A), after the word "possession" there were inserted "on Ground 8 in Part I of Schedule 5 to this Act or".
(3) Section 20 has effect as if subsection (6) (no discretion where landlord entitled to possession) were repealed.
(4) Section 33 (recovery of possession on termination of a short assured tenancy) has effect as if in subsection (1)—
(a) in the opening words, for the word "shall" there were substituted "may",
(b) after paragraph (b), the word "and" were repealed,
(c) after paragraph (d) there were inserted ", and
(e) that it is reasonable to make an order for possession."
(5) Schedule 5 (grounds for possession of houses let on assured tenancies) has effect as if for the heading of Part I there were substituted "Certain grounds on which First-tier Tribunal may order possession in relation to the period of the Coronavirus (Scotland) Act 2020".

13. The Tribunal was satisfied that the ground relied upon in the Form AT6 had been met and further that it was reasonable to grant the Order, as is required to be considered under the said 2020 Act.

14. The Applicant had lodged an affidavit which clearly set out the reasons behind his need to move back to Scotland with his family, and reside in the family home. It was clear that the Respondent was upset by this and that she questioned why the Applicant would change his mind after having stated he was going to re-mortgage. The Tribunal accepted the evidence of the Applicant that the outcome of the surveyors' visit was not favourable to entering into a re-mortgage, and consequently the best thing for him and his family was to return to Scotland. It was clear from the affidavit that the Applicant had suffered financial difficulties due to the pandemic. These were being exacerbated by the Respondent's failure to pay rent. Nonetheless, the Tribunal was satisfied on the basis of the evidence before it and submissions made by the Applicant that Ground 1 had been established.
15. The Tribunal accepted that the Respondent had taken steps to obtain alternative accommodation. It was noted that a property had been identified for her to move into and that she had been told that the issues preventing the sale from completing should be resolved in the near future. The Tribunal noted that the Respondent had a property which she owned but she had chosen not to pursue repossession of same as alternative accommodation for her and her partner. It was noted that the rental income for same was £400 and which she said covered her mortgage payments, therefore it would seem to be a far more affordable property for her, under her current income constraints.
16. The Tribunal also noted that the Applicant's current residency in Geneva was detrimental to the Applicant's son's education, and moving back to Scotland would enable him to enrol back into a Scottish school. The Applicant's elderly parents also require care and assistance and this cannot be provided by the Applicant easily from his current place of residence, nor are there any other siblings to assist. The Respondent has confirmed that she has sourced alternative accommodation and has been told that the issues surrounding settlement of the sale should be resolved imminently. Therefore, against that background the Tribunal is satisfied that it is reasonable to grant the Order.

- Decision

17. 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.

Fiona Watson

Legal Member/Chair

Date: 19 March 2021