



**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/18/2733**

**Re: Property at 82 Cardowan Road, Carntyne, Glasgow, G32 6QP (“the  
Property”)**

**Parties:**

**Mr Stephen David McCullagh, 105 Gartcraig Road, Riddrie, Glasgow, G33 2RY  
 (“the Applicant”)**

**Mrs Elizabeth Dickson, 82 Cardowan Road, Carntyne, Glasgow, G32 6QP (“the  
Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the application should be refused without a  
hearing.**

**Background**

By application, received by the Tribunal on 15 October 2018, the Applicant sought an Order for Possession of the Property on Grounds 8, 11 and 12 of Schedule 5 to the Housing (Scotland) Act 1988 (“the 1988 Act”).

The application was accompanied by copies of a Section 19 Notice (Form AT6) and a Notice to Quit, both dated 24 July 2018. The Section 19 Notice advised the Respondent that proceedings would not be raised before 10 September 2018. The Notice to Quit did not advise the Respondent of the date by which she was required to vacate the Property.

A Case Management Discussion was held at Glasgow Tribunals Centre on 5 December 2018. The Applicant represented himself and the Respondent was represented by Siobhan Johnston of Brown & Co, solicitors.

At the Case Management Discussion, the issue of the lack of a date in the Notice to Quit was raised. The Applicant stated that its omission was a clerical error, but the

Respondent's solicitor provided sight of an earlier Notice to Quit of 10 April 2018 and it, too, lacked a date by which the Respondent was to quit the Property. The Applicant stated that he had sent another Notice to Quit around December 2017, but was unable to provide the Tribunal with a copy of it on the day.

There had been two leases of the Property, one beginning on 1 August 2018 and the other dated 16 December 2016. The Parties agreed that the case should be determined on the basis of the later lease ("the Lease").

The Respondent's solicitor referred the Tribunal to Section 18(6)(b) of the 1988 Act, which (paraphrasing) states that the Tribunal shall not make an Order for Possession under, inter alia, Grounds 8, 11 or 12 of Schedule 5 to the 1988 Act unless the terms of the tenancy make provisions for it to be brought to an end on the ground in question. Ms Johnston argued that the Lease lacked any specific wording that came close to the wording of Grounds 8 or 11 and made additional submissions to the effect that the essential elements of Ground 12 were also missing in the wording of the Lease.

The Legal Member adjourned the matter to a further Case Management Discussion and issued a Direction to the Parties requiring the Applicant to provide any further Notices to Quit on which he sought to rely and the Respondent to provide (if so advised) any submissions on why it might not be reasonable for the Tribunal to grant an eviction based on Grounds 11 or 12 of Schedule 5 to the 1988 Act, in the event that the Tribunal were to hold that an eviction on such grounds was competent under the application. The Parties were to lodge the said documentation with the Tribunal no later than 28 December 2018.

Neither party lodged any documentation with the Tribunal by the date stated in the Direction.

### **Case Management Discussion and Reasons for Decision**

A further Case Management Discussion was held at Glasgow Tribunals Centre on the morning of 11 January 2018. The Parties were both present. The Applicant represented himself and the Respondent was again represented by Ms Johnston. The Applicant's solicitor advised the Tribunal that she had lodged written submissions with the tribunal on the previous day. She acknowledged that the Applicant had not had an opportunity to consider them.

In terms of Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) regulations 2017, the Tribunal may at a case management discussion do anything which it may do at a hearing, including deciding the application. The Tribunal was of the view that it was able to decide the application without a hearing.

In normal course, the Legal Member would have adjourned the matter to a further Case Management Discussion to afford the Applicant an opportunity to consider and respond to the written submissions made on behalf of the Respondent and, if he wished, to seek legal advice. The Applicant had, however, advised the Tribunal that he had been unable to find any Notices to Quit apart from those that had been before the Tribunal at the Case Management Discussion of 5 December 2018. The Legal Member advised the parties that he regarded both the Notice to Quit dated 24 July 2018, submitted with the application, and the Notice to Quit dated 10 April 2018 as fatally flawed, in that they did not contain a date by which the Respondent should vacate the Property. Accordingly, the application must be refused.

It followed that it was not necessary for the Tribunal to come to a conclusion on whether the terms of the Lease met the requirements of Section 18(6)(b) of the 1988

Act, but the Tribunal noted the opinion of Sheriff Principal Wheatley in Royal Bank of Scotland plc v Boyle 1999 HousLR 63 that the essential ingredients of Schedule 5 Grounds relied upon by the landlord must be referred to in the tenancy agreement and that he was not satisfied that necessarily in all cases incorporation by reference would be sufficient or indeed appropriate. The Tribunal makes no finding as to whether incorporation by reference would have been sufficient in the present case.

### **Decision**

The Tribunal determined to refuse the application without a hearing.

### **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.

George Clark

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**Legal Member/Chair**

11 January 2019  
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**Date**