



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/EV/18/0205

**Re: 72 Northfield Road, Bonhill, Alexandria, West Dumbarton, G83 9EU
("the Property")**

Parties:

**Constance Arumemi-Johnson, 66 Martin Brae, Ladywell, Livingston, West
Lothian, EH54 6UT ("the Applicant")**

**Elizabeth Stewart, 72 Northfield Road, Bonhill, Alexandria, West Dumbarton,
G83 9EU ("the Respondent")**

Tribunal Members:

Rory A B Cowan

(Legal Member)

Decision in absence of the Applicant and Respondent

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

- **Background**

The Applicant submitted an Application to the First-tier Tribunal on 24th January 2018 seeking an order for possession in terms of Rule 65 and based on section 18 of the Housing (Scotland) Act 1988. The Case Management Discussion took place on 11th May 2018. Neither the Applicant nor the Respondent attended the Case Management Discussion. Notwithstanding the Applicant submitted various documents, photographs and confirmed by email of 10th May 2018 that she would not be in attendance and that she was "...happy for the panel to decide the case based on the documents from both sides.". The Respondent was also told that she required to attend the Case Management Discussion today and was told that the Tribunal could make any decision on the Application at the Case Management Discussion.

- The Case Management Discussion

Notwithstanding the fact that neither party attended, the Tribunal proceeded to consider the Application based on the Application form itself, supporting documents lodged, further documents including those lodged in response to the Direction dated 12th April 2018.

- Findings in Fact

1. That the Applicant and the Respondent entered into a tenancy agreement relative to the property at 72 Northfield Road, Bonhill, Allexandria G83 9EU.
2. That the tenancy agreement commenced on 20th August 2016.
3. That on or around 20th February 2017 the Applicant and Respondent entered into a further lease, which commenced on 20th February 2017 and was for a term of 24weeks.
4. That the ish date of the contractual term that commenced on 20th February 2017 was therefore 6th August 2017.
5. That the lease has continued under the operation of Tacit Relocation since 6th August 2017 on intervals of 24weeks.
6. That the lease dated 20th February 2017 does not meet the requirements of section 18(6) of the Housing (Scotland) Act 1988.
7. That the Notice to Quit dated 20th December 2017 is stated as expiring on 20th February 2018.
8. That 20th February 2018 is not an ish date and accordingly the contractual tenancy has not been terminated by the said Notice to Quit.
9. That in any event, the Notice to Quit was not served by an appropriate method of service.
10. That no order for possession can be made by the Tribunal under section 18 of the Housing (Scotland) Act 1988 as the contractual tenancy has not been terminated by the Notice to Quit dated 20th December 2017.
11. That, even if the contractual tenancy had been terminated by the Notice to Quit dated 20th December 2017, proper notice in terms of section 19 of the Housing (Scotland) Act 1988 has not been given to the Respondent and no order for possession could be made on that basis either.

- Reasons for Decision

The Tribunal proceeded on the basis of the written documents, photographs that had previously been lodged. The Applicant seeks an order for possession in terms of section 18 of the Housing (Scotland) Act 1988 and relies upon various grounds of possession set out in schedule 5 of that Act.

The grounds relied upon, albeit not clear from the Application, were confirmed as being Grounds 1, 6, 9, 10, 11, 12, 13, 14 and 16. These grounds were listed in the section 19 notice (AT6) dated 7th February 2018. The Applicant had produced an earlier AT6 dated 19th December 2017 with the Application but did not detail the grounds she sought recovery under. As an aside, it is not clear when or how either AT6 was served as no executions of service were produced with them. Indeed, it was noted that both AT6s were deficient in terms of content in that they failed to specify the grounds and the particulars of those grounds in the notice as required by

section 19(2) and failed to give the required period of notice for any applicable grounds as required by section 19(4). For example, the AT6 dated 7th February 2018 set as its date of expiry the 2nd of February 2018, some 5 days earlier. Accordingly, in the absence of a motion to either dispense with such notice or to seek leave to alter the AT6, even if served correctly, the two AT6 notices do not meet the requirements of section 19 of the Housing (Scotland) Act 1988.

However, the issues with the Application are more deep seated than that. As indicated, the Applicant seeks an order for possession under section 18 and in particular the various grounds in schedule 5 of the Housing (Scotland) Act 1988 as detailed above. In terms of section 18(6) of the Housing (Scotland) Act 1988, only a limited number of the schedule 5 grounds can be relied upon whilst the contractual tenancy is still in existence. These are grounds 2 and 8 in part I of schedule 5 and all the grounds in part II. However, in order for that to be the case, the terms of the tenancy must make provision for the lease to be brought to an end under those grounds. That means the grounds must be referred to in the lease and either incorporated in full or that sufficient detail of those grounds to give the essential ingredients of those grounds should appear in the lease (Royal Bank of Scotland PLC v Boyle 1999 HousLR 42).

The other grounds listed in schedule 5 therefore require the contractual tenancy to be terminated before they can form the basis of an order under section 18 of the Housing (Scotland) Act 1988.

The Lease that commenced on 20th February 2017, a copy of which was produced by the Applicant, is described as an "Assured Shorthold Tenancy Agreement", which is style document for use in England and Wales and is not suitable for use in Scotland. It makes no reference to the grounds for possession under schedule 5 of the Housing (Scotland) Act 1988, which is no great surprise as it is written for use in a different legal system and therefor does not fulfil the requirements of section 18(6) of the Housing (Scotland) Act 1988.

As such, in order for the landlord to be able to rely on any grounds under schedule 5, she would need to have terminated the contractual tenancy first by way of service of a valid Notice to Quit. In order to be valid, the Notice to Quit would have to be served on the Respondent, give her the required minimum notice period (in this case 40 days) and expire on an 'Ish' date (that is the contractual end date).

The Applicant's position is that the Respondent and her entered into a lease which commenced on 20th August 2016 (although no copy of this has been produced), but that they then entered into a new contractual tenancy commencing on 20th February 2017. An unsigned copy of this tenancy agreement has been produced and in her letter dated 7th February 2018, the Applicant confirms that the copy produced is what was agreed between the parties and was signed by the Respondent. The Applicant suggests in the Application and her letter of 7th February 2018 that this agreement was set to end on 20th February 2018. However, on page one of the tenancy agreement under the heading "THE MAIN TERMS OF THE AGREEMENT ARE:", the 'term' or duration of the tenancy is expressed as being "24 weeks commencing on and including February 20th 2017". That being the case, the Ish or end date of that contractual term would be 6th August 2017 not 20th February 2018 as suggested by the Applicant (as the tenancy agreement makes it clear the first day is to be included). Thereafter, as Tacit Relocation has not been excluded, the lease has continued at intervals of 24weeks, meaning the ish or end date following that was 21st January 2018. That being the case, the Notice to Quit dated 20th December 2017 which is stated as expiring on 20th February 2018 is invalid and does not

operate to terminate the contractual tenancy. Further, no information has been given as to how the Notice to Quit was served, but for the reasons given, even if it were served correctly it would be ineffective. It therefore follows that, if the contractual tenancy has not been terminated, the Tribunal cannot make an order for possession under section 18 of the Housing (Scotland) Act 1988.

- Decision

The Tribunal therefore refused to grant an order for possession.

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.

Rory Cowan

Legal Member

Date

11th May 2018