

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/18/1492**

**Re: Property at 1 Braehead Street, Kirkintilloch, G66 1PS (“the Property”)**

**Parties:**

**Mr Scott Johnstone, 39 Farm Wynd, Woodilee, Lenzie, G66 3RJ (“the Applicant”)**

**Mr Charles Fitzimmons, 1 Braehead Street, Kirkintilloch, G66 1PS (“the Respondent”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member)**

**Decision (in absence of the Applicant)**

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

**Background**

This is an application dated 18<sup>th</sup> June 2018 brought in terms of Rule 65 (Application for order for possession in relation to assured tenancies) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant provided with his application copies of the short assured tenancy agreement, form AT5, section 19 notice (form AT6), notice to quit, and Section 11 notice.

The form AT6 intimated to the tenant that the landlord intended to raise proceedings for possession of the house on ground 8 of Schedule 5 to the *Housing (Scotland) Act 1988*.

The short assured tenancy agreement, form AT5, and section 11 notice had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

Unfortunately, the notice to quit and form AT6 are defective in various respects. The notice to quit specifies a date to vacate the property which is not an *ish* of the lease. The date specified in the notice to quit is 13<sup>th</sup> June 2018.

The lease states at paragraph 1 that "The Lease shall run from 13<sup>th</sup> September 2013 which will be the date of entry, until 13<sup>th</sup> September 2014." It makes no further provision in relation thereto, and in particular says nothing regarding tacit relocation.

That being so, in the absence of contrary express provision in the lease agreement, the lease is subject to tacit relocation for a further year until 13<sup>th</sup> September of the next year. In those circumstances, 13<sup>th</sup> June 2018 is not an *ish* of the lease, and the notice to quit is accordingly invalid and ineffectual.

The form AT6 does indicate that ground 8 is being relied upon, but it does not specify at Part 3, as it should, the reasons for seeking possession on that ground.

More fundamentally, the form AT6 is ineffectual, as section 18(6) of the *Housing (Scotland) Act 1988* provides that there can be no possession order while the contract runs unless the tenancy agreement specifically makes provision for it to be brought to an end on one of the specified grounds contained in Schedule 5 to the *Housing (Scotland) Act 1988* (see also *Royal Bank of Scotland Plc v Boyle* 1999 Hous. L.R. 63).

The short assured tenancy agreement here does not make such provision, and accordingly an effectual notice to quit is required before a form AT6 can be used.

At a previous Case Management Discussion on 14<sup>th</sup> September 2018, the Respondent's representative argued these points before the Tribunal, which adjourned the hearing until 25<sup>th</sup> October 2018 to allow the Applicant to consider those arguments and indicate his response to them.

I would note that the Respondent's representative also argued that hand delivery of the notice to quit was insufficient to be effective service, and that it required to be served by sheriff officer or recorded delivery post.

That was undoubtedly the position prior to the Tribunal acquiring the former Sheriff Court's jurisdiction in these matters. However, the previous rules relating to requirements for service of notices to quit all flowed from the Sheriff Court's procedural rules, which do not apply to the Tribunal.

Perhaps surprisingly, the Tribunal has no equivalent procedural rules, thereby leaving a legal *lacuna* regarding what (if any) requirements now apply to the service of notices to quit.

It is unnecessary for the purposes of this application, however, to express any view on this latter point, and the Tribunal does not do so here.

### **Case Management Discussion**

A continued Case Management Discussion was held on 25<sup>th</sup> October 2018 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant did not appear, and was not represented. The Respondent did not appear, but was again represented by Miss Macleod, solicitor, who appeared on 14<sup>th</sup> September 2018.

Miss Macleod provided copy e-mails to the Tribunal between herself and the Applicant's representative, which appeared to indicate that the parties had entered into a new tenancy agreement in relation to the Property, and that the Applicant would take no further action at this time with respect to the application.

Miss Macleod appeared today for the Respondent simply as the Applicant has not formally withdrawn the application, albeit that her understanding was that the Applicant is not proceeding further with it.

Miss Macleod invited the Tribunal to dismiss the application for the reasons she had advanced at the previous Case Management Discussion, and which are above narrated.

### **Statement of Reasons**

Section 18(6) of the *Housing (Scotland) Act 1988* provides that 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.

As earlier narrated, the tenancy agreement here does not make such provision for it to be brought to an end on any of the grounds contained in Schedule 5 to the *Housing (Scotland) Act 1988*.

That being so, the form AT6 can only be effective if a valid notice to quit has been served to bring the contractual tenancy to an end. As earlier noted, the notice to quit served here is ineffective as it does not specify a date which is an *ish* of the tenancy agreement.

As a result, the Tribunal must dismiss this application. It would appear that the Applicant is not intending to proceed further with it from the e-mail correspondence received by the Respondent's representative, albeit that the Applicant has not communicated that intention to the Tribunal directly.

## Decision

In these circumstances, 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.

N. Kinnear

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Legal Member/Chair

25/10/18  
Date