



**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 (“the 1988 Act”) and Rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)**

**Chamber Ref: FTS/HPC/EV/18/1796**

**Re: Property at Newton Croft, Crimond, Fraserburgh, AB43 8QJ  
 (“the Property”)**

**Parties:**

**Messrs N Cowie, Messrs N Cowie, Messrs N Cowie, Bilbo Farm, Crimond, Lonmay, Fraserburgh, AB43 8QR  
 (“the Applicant”)**

**Archibald Millar, Solicitor, MacRae Stephen & Co, 40 Broad Street, Fraserburgh, AB43 9AH  
 (“the Applicant’s Representative”)**

**Mr Alan Nicol, Newton Croft, Crimond, Fraserburgh, AB43 8QJ  
 (“the Respondent”)**

**Tribunal Members:**

**Susanne L M Tanner Q.C. (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) was satisfied that Ground 6 in Part I of Schedule 5 to the 1988 Act was established by the Applicant, in that the Applicant intends to demolish or reconstruct the whole or a substantial part of the Property or any part thereof; the Applicant acquired his interest in the Property before the creation of the tenancy; and the Applicant cannot reasonably carry out the intended work without the Respondent giving up possession of the house because the work cannot be carried out even if the Respondent accepts a variation in the terms**

**of the tenancy or an assured tenancy; and the tribunal made an order for possession in terms of Section 18(3) of the 1988 Act.**

## **1. Procedural Background**

1.1. The Applicant made an application to the tribunal on 16 July 2018 in terms of Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act") and Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").

1.2. The Applicant sought the Respondent's eviction from the Property under Ground 6 of Schedule 5 to the 1988 Act.

1.3. The Applicant lodged with the Application:

1.3.1. Information about the assured tenancy between the Applicant and the Respondent;

1.3.2. a copy of the Notice to Quit and AT6 notice dated 5 April 2018 together with proof of service on 5 April 2018 by Sheriff Officers and proof of collection from Peterhead Delivery Office on 28 June 2018;

1.3.3. A Report by Gareth D Cordiner, Senior Associate Building Surveyor, Hardies LLP, dated 21 February 2018 with Schedule of photographs; and

1.3.4. a copy of the Section 11 Notice which was sent to the local authority.

1.4. The Application was referred to the tribunal on 30 July 2018.

1.5. A Case Management Discussion was fixed for 11 October 2018 at 1400h. Both parties were notified of the date, time and place of the CMD. Service on the Respondent was made by Sheriff Officers as per the Certificate of Execution of Service by Sheriff Officers dated 27 September 2018.

## **2. Case Management Discussion ("CMD"): 11 October 2018 at 1400h at AB1,**

2.1. The Applicant's legal representative attended the CMD.

2.2. The Respondent did not attend the CMD. The Applicant's Representative provided information to the tribunal in relation to the possible present whereabouts of the Respondent, as discussed further below.

2.3. The CMD proceeded in the absence of the Respondent.

### **3. Findings in Fact**

3.1. There is an assured tenancy for the Property between the Applicant and the Respondent which began in or about 1995.

3.2. The rent payable is £60 per week.

3.3. The last rent payment was made by the Respondent in or about 29 January 2010 and there are rent arrears totalling approximately £26,000 Sterling.

3.4. The Respondent has repeatedly refused to allow the Applicant and his representatives to have access to the Property.

3.5. The Respondent has built physical barriers to prevent or restrict access to the Property to the Applicant, his Representative and others.

3.6. On or about 16 January 2018 the tribunal granted an order for the Applicant to access the Property for the purposes of an assessment of the condition of the Property by a specialist surveyor.

3.7. The tribunal member, the Applicant's representatives and the appointed surveyor were unable to access the inside of the Property on 16 January 2018 due to a refusal by the Respondent to allow access.

3.8. The surveyor gained access to the garden ground surrounding the Property on 16 January 2018 and a survey was conducted on the basis of an external examination of the Property.

3.9. The Property is in a poor state of repair and requires significant works to be carried out to prevent further damage and deterioration of the Property.

3.10. There is a wood burning stove in the entrance porch with the flue being fixed through plywood, which is a fire hazard and separately would not comply with Building Regulations.

3.11. Due to the amount of works required to the Property, concerns over the wood burning stove and damage to the electrics throughout the Property, the Property would not be habitable during any potential refurbishment.

3.12. There is a likelihood that without substantial reconstruction or demolition the condition of the Property will deteriorate further and could present a danger to the occupants or others on the premises.

#### **4. Reasons for Decision**

4.1. The Applicant's Representative advised that he has been made aware by the Applicant that on two separate occasions recently police have attended at the Property with a view to uplifting the Respondent. The involvement of police officers is thought to relate to powers available to them under the Mental Health Acts. Yesterday (10 October 2018), the Respondent was taken away in handcuffs by police officers. Dog wardens have also attended at the Property and arrangements are being made to take away 22 dogs.

4.2. The Applicant's Representative called police this morning to ascertain had happened yesterday and to ask police for any information they can disclose about the current whereabouts of the Respondent. The Applicant's Representative was advised by a police officer that the Respondent was not in custody in Fraserburgh Police Office. Mr Alexander Cowie, a partner in the Applicant firm contacted the police to request additional information. Mr Cowie was expecting a phone call from the police and was going to call the Applicant's Representative if he received any additional information prior to the CMD, but no phone call had been received by the Applicant's Representative by 1400h.

4.3. By way of background, the Applicant's Representative made reference to the summary lodged with the Application. He advised that Mr Cowie's father, who is a partner in the Applicant firm, allowed the Respondent to take occupancy in 1995 by way of a "gentleman's agreement". There is no lease documentation. There is a statutory assured tenancy.

4.4. The Respondent appears to have some vulnerabilities and possible mental health issues. The Applicant's Representative further advised that the Respondent has surrounded the house with high hedges, fences, secure panel gates so that no-one can get into the Property or garden ground. Over the years he has gradually filled the garden with vehicles and the house and surrounding garden ground with dogs.

4.5. The Applicant's Representative made reference to the survey report and schedule photographs and adopted what was said with reference to the current condition of the Property and the works required to make it both safe and habitable.

- 4.6. The Applicant's Representative advised that the Applicant has, on a number of occasions, attempted to gain access to assess the property to assess its condition with a view to ascertaining what works are required.
- 4.7. About 5 years ago a partner of the firm raised a Sheriff Court action to gain possession because of dire condition of the Property. At that time the Sheriff held that pursuer (now the Applicant) was refusing to maintain the Property and directed the Respondent that he need not pay rent.
- 4.8. The Applicant is increasingly concerned about the consequences of being unable to inspect, repair and maintain the Property. As well as his obligations in terms of the Repairing Standard he is afraid that something will happen as a result of the state of the Property and the potential issues of liability for such health and safety matters.
- 4.9. The Applicant decided to take action in about January 2018 and applied to the tribunal for a right to enter the property with a view to instructing a specialist surveyor to assess its condition. A Tribunal member attended on 16 January 2018 to give entry and police officers and Sheriff officers were present. The Respondent refused to allow anyone in. Eventually the surveyor got into the garden. The Respondent refused to allow the surveyor into the house. The Tribunal member did not get into the house. The Applicant's Representative explained to the surveyor why access was needed and what the concerns were. The Surveyor said that he could assess the Property from the outside. On the basis of his inspection the Surveyor formed the view that he did not think the inside would be in any way fit for habitation.
- 4.10. The Applicant's Representative made no further attempts to access the Property at that time due to the suspected vulnerabilities of the Respondent,
- 4.11. The Applicant's Representative stated, with reference to the survey report, that there is extensive work required to the Property and given the additional time which has passed since the survey report, it may require to be demolished. In addition to the matters raised in the survey report, he also stated that it is infested by vermin.
- 4.12. The Applicant's Representative's last contact with the Respondent was on 16 January 2018 on the date of the survey report.
- 4.13. The Applicant's Representative stated, with reference to para 1.5.5 of the Report that due to the amount of works required to the Property as noted in the Report, concern over the safety of a wood burning stove and damage to the electrics throughout the Property, the Property would not be habitable

during any potential refurbishment (or indeed demolition if that course is taken).

- 4.14. In response to a question from the tribunal about the time over which works are likely to take place, the Applicant's Representative stated that the surveyor has not addressed the amount of time but he has stated the nature and extent of the works and stated that the Property would not be habitable during the works.

## **5. Application of the Applicable Law**

- 5.1. The tribunal had regard to the requirements of Section 18 and Ground 6 of Schedule 5 of the 1988 Act.
- 5.2. On the basis of the documentation lodged and the submissions made on behalf of the Applicant at the CMD, the tribunal was satisfied that the conditions in Ground 6 of Schedule 5 to the 1988 Act were met.
- 5.3. The tribunal was therefore required to make an order for possession of the Property in terms of Section 18(3) of the 1988 Act and proceeded to make such an order.

## **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.**

11 October 2018

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Susanne L M Tanner Q.C.  
Legal Member/Chair