

SHERIFFDOM OF TAYSIDE CENTRAL AND FIFE AT STIRLING

[2025] SC STI 63

STI-F34-24

JUDGMENT OF SHERIFF KEITH O'MAHONY

in the cause

H

Pursuer

against

I

Defender

**Pursuer: Bryson, Nelsons Solicitors**  
**Defender: Bhatti, Virgil M Crawford**

Stirling 25 July 2025

The sheriff, having resumed consideration of the cause

**Finds in Fact:**

1. That the pursuer is H being the subjects of this dispute. She is presently unemployed.
2. The defender is I. He presently resides either at his mother's address, or at other properties belonging to family members. Within his mother's property he has his own bedroom. He is a self-employed joiner and makes around £600 per week.
3. The property forming the subjects of this dispute is a terraced house. It is rented from the local authority. The sole tenant is the defender who signed the lease in June 2011. The rent is around £87.00 per week.

4. The pursuer and defender were married at Gretna Green on the 19 July 2018. They lived together as man and wife until around the end of January 2024 when they separated. Since that time, they have not lived together.

5. The marriage has broken down irretrievably. There are no prospects of a reconciliation.

6. Following their marriage and for a period prior to that the parties resided together at the property forming the subject of this action.

7. Both parties have financially contributed to the maintenance of the property, payment of the rent and payment of the council tax.

8. Since separation in January 2024 the defender has not resided at the property.

#### **FINDS IN FACT AND LAW:**

1. That the action, being related to the tenancy of a property located within the territorial jurisdiction of this court, this court has jurisdiction in the cause.

2. That the marriage of the pursuer to the defender has broken down irretrievably as established by the defender's behaviour.

3. That the nature of the relationship between parties was such that they are entitled, having regard to the provisions of section 18 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (the Act), to be regarded as a cohabiting couple. The property is a matrimonial home.

4. That, given parties entitlement to be regarded as a cohabiting couple, the provisions of section 18(3) and section 13 of the Act apply to them.

5. That the defender, being the signatory to the lease, is an entitled spouse as provided for by section 18(1) of the Act. The pursuer, not being a signatory to the lease, is a non-entitled spouse as provided for by section 18(1) of the Act.
6. That the pursuer, being a non-entitled spouse, is entitled to apply to the court for transfer of the tenancy to her name, as provided for by section 13(1) of the Act.
7. That none of the circumstances set out in section 13(7) of the Act apply to the tenancy in the present case.
8. That in determining in which of them the tenancy shall lie, the court requires to consider all the circumstances of the case including, but not limited to, the following factors:
  - (a) the suitability of the party to become the tenant (section 13(3)).
  - (b) the capacity of the party to perform the obligations of the tenancy (section 13(3)).
  - (c) the conduct of the parties in relation to each other and otherwise (section 3(2)(a)).
  - (d) the respective needs and financial resources of the spouses (section 3(2)(b)).
  - (e) the needs of any child of the family (section 3(2)(c)).
  - (f) the extent (if any) to which the matrimonial home; and any item of furniture and furnishings is used in connection with a trade, business or profession of either spouse (section 3(2)(d)); and
  - (g) whether the entitled spouse offers or has offered to make available to the non-entitled spouse any suitable alternative accommodation (section 3(2)(e)).
9. That having regard to all of the circumstances of the case, the court considers that the tenancy should be vested in the defender.

**THEREFORE;** the court returns the case from avizandum, and having resumed consideration of the cause, sustains the first plea-in-law for the pursuer and accordingly divorces the pursuer from the defender; repels the second, third, fourth, fifth and sixth pleas-in-law for the pursuer as no longer insisted upon; repels the seventh and eighth pleas-in-law for the pursuer; sustains the third plea-in-law for the defender insofar as it relates to the transfer of tenancy; there being no application for any award of compensation for the pursuers loss of interest in the tenancy, makes no award of compensation; reserves the question of expenses meantime.

#### NOTE

[1] This matter proceeded to proof on 4 July 2025. The court heard all the evidence and submissions in a single day. Evidence-in-chief from all witnesses was taken by affidavit.

[2] The court heard evidence from:

- The pursuer
- The defender
- L, being the defender's mother.

[3] At a hearing on the 29 October 2024 those acting for the defender had indicated that crave one, that being a crave for divorce on the basis of the defender's unreasonable behaviour, was not opposed. That was noted by the court and the court thereafter allowed crave one to proceed as undefended. A supporting affidavit was submitted,

[4] On the date of proof the defender's solicitor sought to reverse from that undefended position, presumably on the basis that she feared such a concession as regards the defender's behaviour would have an adverse effect on the strength of the defender's argument in the remainder of the cause. Instead, she sought decree of divorce on the basis of non-

cohabitation. The solicitor for the pursuer opposed that position. No minute of amendment had been lodged seeking to alter the basis upon which divorce was sought. The concession had already been made and could not be departed from.

[5] I was not prepared to allow the late change of position by the defender where no minute of amendment had been received and the defender has had the benefit of legal representation throughout the course of the action. Accordingly, I granted the undefended crave for divorce on the basis of unreasonable behaviour. The court is not bound by that suggestion of unreasonable behaviour in its determination of the remainder of the action. It remains incumbent upon the court to consider the evidence in relation to the alleged behaviour of the defender in assessing what orders are appropriate relating to the matrimonial home.

[6] Further to agreement at the hearing of the 13 March 2025, the matter proceeded to proof on craves seven, nine, ten and eleven only. The remaining craves (with the exception of the divorce crave) were not insisted upon.

[7] I have noted above the factors to which the court must have regard in determining an action of this nature. I can deal with some of these briefly.

[8] Suitability to be the tenant - There is little to choose between parties. It was suggested to the defender that he had been involved in an altercation with a neighbour in relation to some DIY work that the neighbour was carrying out in their garden and that he had also been involved in a neighbourhood car park dispute. As I understood it, the purpose of the evidence was to show that the defender would not be a suitable tenant for the property as he had a proclivity to generate neighbourhood disputes and act aggressively towards others. While the defender accepted that these events had taken place, he did not accept the characterisation of them as put to him. In essence, he suggested that he was the

wronged party in these events. No independent evidence was led to allow the court an opportunity to make a credibility assessment. Moreover, even if established as facts, this would amount to only two occasions where the defender had fallen into disagreement with his neighbours over the course of 13 years and would impact only fleetingly on the question of suitability.

[9] The capacity of parties to meet the obligations of the tenancy – the defender is in the stronger financial position. He is employed; the pursuer is not. The defender has been paying the rent since separation notwithstanding that he is now absent from the property.

[10] The respective needs and financial resources of parties – both parties ‘need’ somewhere to live. Neither has any specific need (such as a disability of some kind) that renders certain properties unsuitable for them. There was no evidence that either party has any significant capital.

[11] The needs of any child – there are no children.

[12] Business or profession – the property is not used in the course of any business.

[13] Alternative accommodation – neither party is in a position to make an offer of alternative accommodation.

[14] It therefore comes to this (and I understood parties to accept this at the conclusion of evidence) - the only basis upon which the pursuer can hope to establish her case is by having the court accept that the conduct of the defender has been such that she should be entitled to the transfer of the tenancy.

[15] The majority of the evidence centred around the conduct of the defender towards the pursuer during the currency of their relationship. I heard evidence about a number of different chapters which I shall under note. The only evidence the court heard in support of the pursuer's position came from the pursuer herself.

*Event of January 2024*

[16] At the end of January 2024, the pursuer gave evidence that she had returned home from a shopping trip. She drank some wine. She went into a bedroom where the defender was speaking to his mother on the phone. The defender was annoyed at her presence. She in turn became annoyed at him. She said something to him. The defender then grabbed her by the throat. He was choking her and saying he was going to kill her. She managed to take hold of an article that she struck him on the head with. She was in fear for her life. She ran out of the room and dialled 999. The defender told her that she had better tell the police nothing had happened. She then took an overdose of beta blockers. The police arrived. The defender told her to get rid of them. She tried to do so but eventually opened the door. There was a struggle between the police and the defender. She tried to intervene in the defender's favour. The police then arrested her for obstructing them. The defender's mother attended. The police took the pursuer to the hospital. She was never charged. On being released she became aware that the defender was subject to bail conditions not to enter Station Road.

[17] On the same event, the defender claimed that the pursuer had become upset when discussing certain funeral arrangements for a relative who was still alive. The pursuer started shouting and swearing expressing a desire to harm another relative. She was on her knees screaming. He tried to calm her down. Without warning the pursuer punched him on the mouth. He told her that their relationship was over. The pursuer phoned the police and falsely claimed that he had strangled her. He denied having physically harmed her in any way.

[18] L said that she had been on the phone to her son, the defender, during the event. She described the pursuer as screaming at him. She was yelling insults and calling him derogatory names. She stated that the pursuer had been drinking and that many issues had arisen due to the pursuer's drinking habits. She claimed to be able to hear the pursuer on the phone to the police telling them she was being strangled by the defender, while at the same time, the defender was still talking to her on the phone.

[19] The pursuer was never prosecuted. The defender was, however only for his actions towards police officers, not the pursuer. He ultimately pled guilty to two of four charges.

#### *6 February 2024*

[20] The pursuer had spent some time in a Women's Aid refuge. She returned to Stirling and had the locks changed. To her surprise the defender arrived. He could not get in. He started shouting. He wanted his Xbox and PlayStation. She was terrified. He was swearing and banging on the door. She phoned the police. By the time they had arrived the defender had left.

[21] The defender recalled the same incident. He denied shouting, swearing, demanding entry and threatening the pursuer.

[22] No independent evidence was led to assist the court. The defender was prosecuted and the case against him was found not proven.

#### *June 2014 Event*

[23] Notwithstanding its distance from these events, evidence was led of an event in June 2014 that took place at Troon train station. The pursuer stated she had decided to visit her mum and taken the dog with her. For reasons which remain entirely unclear to me the



defender appeared to think that the pursuer was leaving him. He drove to Troon train station and met the pursuer as she got off the train. She claimed the defender grabbed and pushed her causing her to fall onto the platform. The police were phoned.

[24] The defender reported an entirely different event where he claimed the pursuer had stolen his dog and he went to retrieve it. He denied ever having assaulted her and stated CCTV would confirm his position. The defender claimed he had been found not guilty because he had been “admonished”. Clearly in that regard he must be mistaken and presumably does not fully understand the meaning of the word admonished. The schedule of previous convictions confirms that the defender was convicted of threatening or abusive behaviour together with a domestic aggravation. He was admonished.

[25] Again, there was no independent evidence led to allow the court to make a reasoned assessment on credibility.

[26] The defender admitted writing a letter to the pursuer in breach of his bail conditions while awaiting trial. It was not an abusive letter but affectionate in its terms.

### *Conclusion*

[27] The pursuer gave evidence in relation to all these events. Additionally, in a more general sense, she claimed to have been the subject of abusive behaviour by the defender for many years. She led no corroborating evidence. She prayed in aid evidence she had reported domestic abuse to her GP and the police and sought the help of Women’s Aid. The pursuer herself is, of course, the source of those claims. A letter was lodged in evidence from a neighbour who said she heard the defender “shouting and screaming” through the wall. The author was not led in evidence so credibility could not be tested. No further specification of context and dates was offered.

[28] It is the pursuer's case to prove. It is for her to satisfy the court that the defender has behaved in a way which would satisfy the test laid down in the legislation. She has failed to meet that test. Her solicitor invited me to conclude her account is more likely to be true than not. I cannot do that. There is nothing independent in the evidence that would allow me to reach an adverse inference as regards the defender's credibility. He has one relevant previous conviction – relevant because it carries a domestic aggravator – and it is 11 years old. The other chapters of evidence relied upon by the pursuer are all disputed and her position is not supported by anything independent.

[29] Indeed, on the question of credibility, the evidence of L is informative. She spoke to the pursuer being untruthful with the police during the event in January 2024. Given her relationship with the defender I treat her evidence with some caution, but ultimately, I found her to be generally reliable and credible and was satisfied that that the pursuer had not been entirely truthful in her account of that day. That causes me to question the evidence of the pursuer in relation to all other matters.

[30] I am therefore not satisfied that the test has been met and will refuse the crave for transfer of tenancy.

### *Expenses*

[31] I note the procedural history includes at least one adjourned diet of proof. With that background there may be specific issues parties wish to raise in relation to expenses. I will give them time to discuss those issues. If they wish further procedure to be fixed to consider expenses, then they should advise the court in writing within 28 days. If no representations are made, then I shall simply make an order that no expenses are due to or by.