



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/19/3851

Re: Property at 43 Boghead Road, Dumbarton, G82 2HR (“the Property”)

Parties:

Miss Ashleigh King, 40G Argyle Street, Helensburgh, G84 7RR (“the Applicant”)

Ms Clare King, 43 Boghead Road, Dumbarton, G82 2HR (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession of the Property be made.

Background

This is an application for recovery of the Property and is dated 2nd December 2019.

Case Management Discussion

The Applicant was present and was accompanied by her partner, Cameron Bryce. Ms Gabrielle Reilly, solicitor, was present and represented the Applicant. There was no appearance by The Respondent and the tribunal was satisfied that intimation of the case management discussion had been served on the Respondent.

Ms Reilly said that the application is under Section 18 of the Housing (Scotland) Act 1988 (“the 1988 Act”). She said that she was relying on Ground 1 of Schedule 5 of the 1988 Act which is a mandatory ground. She said the application also refers to Ground 13 which is a discretionary ground but that she would not be seeking to rely on that if the tribunal was satisfied on Ground 1.

Findings in Fact

1. The parties entered into a short assured tenancy agreement on 21st December 2015.
2. A Notice to Quit was served on the Respondent on 31st July 2019.
3. An AT6 was served on the Respondent on 24th September intimating that the earliest date on which proceedings would be raised would be 27th November 2019 and stating that the grounds for recovery were Grounds 1 and 13 of Schedule 5 of the 1988 Act.
4. The Applicant previously occupied the Property as her principal home and requires to reside in the Property.
5. Not later than the beginning of the tenancy the Applicant gave notice in writing to the Respondent that possession may be recovered on the ground that the Property might be recovered on the ground that the Applicant may require to occupy it as her principal place of residence.

Reasons

1. The Law

Section 18(1) of the 2006 Act

The sheriff (now Tribunal) shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act.

Section 18(3) of the 2006 Act

If the sheriff (now Tribunal) is satisfied that any of the grounds in Part 1 of Schedule 5 to this Act is established then,..... he shall make an order for possession.

Schedule 5 Part 1 of the 2006 Act

Ground 1

Not later than the beginning of the tenancy the landlord (or, where there are joint landlords, any of them) gave notice in writing to the tenant that possession might be recovered on this Ground or the sheriff is of he opinion that it is reasonable to dispense with the requirement of notice and (in either case)-

At any time before the beginning of the tenancy, the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them occupied the house as his only or principal home; or

the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of then requires the house as his or his spouse's only or principal home and neither the landlord (or, in the case of joint landlords, any one of them) nor any other person who, as landlord, derived title from the landlord who gave the notice mentioned above acquired the landlord's interest in the tenancy for value.

2. The tenancy agreement before the tribunal incorporated a notice stating that recovery of the property may be sought under Ground 1 as previously referred to.
3. In terms of Section 19 of the 1988 Act, Notice of proceedings of Possession has to be served on a Tenant together with intimation to the local authority. Copies of both were before the tribunal together with confirmation of delivery. A copy AT6 form stating the grounds on which recovery would be sought was before the tribunal.
4. The Applicant said that she had occupied the Property as her principal place of residence until it had been let to the Respondent. The tribunal had before it a copy of an invoice from Lomond Letting Ltd dated 17th September 2015 and addressed to the Applicant at the Property.
5. The Applicant said that the current property which she is occupying requires to be repaired and that she needs to move back to the Property. The tribunal had before it a copy of a letter from the father of the Applicant's partner which confirmed this. The letter states that the writer owns 40G East Argyll Street, Helensburgh which is occupied by the Applicant and her partner. The copy which had been lodged with the tribunal did not have a clear signature on it but Ms Reilly was able to produce a legible copy.
6. The tribunal considered that there was sufficient evidence before it to order possession of the Property and that a Hearing would not require to be held. It accepted the evidence of the Applicant as credible and reliable and determined that this, together with documentary evidence before it, fulfilled the statutory requirements.
7. The tribunal did not require to consider Ground 13 of Schedule 5 Part 1 of the 1988 Act

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.

Martin McAllister