

**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/22/1499

**Re: Property at 3 Hopepark Drive, Smithstone, Cumbernauld, G68 9FG (“the
Property”)**

Parties:

**Mr Simon Murray, Mrs Maggie Murray, Bluebell Cottage, Clay Coton Road,
Stanford on Avon, NN6 6JR (“the Applicant”)**

**Mrs Audrey Crawford, 3 Hopepark Drive, Smithstone, Cumbernauld, G68 9FG
(“the Respondent”)**

Tribunal Members:

Jan Todd (Legal Member) and Helen Barclay (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for possession should be granted in favour
of the Applicant.**

Background

1. This was an application made by the Applicants on 17th May 2022 for an order of eviction against the Respondent, and which was made under Rule 65 of the Tribunals rules and Ground 1 of Schedule 5 of the Housing (Scotland) Act 1988.
2. The Applicants are seeking eviction under Ground 1 as they wish to return to live in the Property.
3. The Applicants lodged the following documents with the application:-
 - a. Short Assured tenancy commencing on 6th December 2016 to 6th June 2017 and thereafter continuing on a month to month basis.
 - b. AT5 dated 3rd December 2016
 - c. Notice to Quit dated 10th January 2022 requiring the tenant to leave by 6th May 2022

- d. S33 notice dated 10th January 2022 requiring the tenant to leave by 6th May 2022
- e. AT6 notice dated 10th January 2022 and advising that proceedings will not be raised before 8th May 2022.
- f. Proof of posting dated 11th January 2022
- g. Evidence of delivery of the Notices on 11th January 2022
- h. S11 Notice to North Lanarkshire Council and evidence of service
4. Prior to acceptance of the application the Tribunal requested evidence of notification to the tenant that the Property may be recovered under Ground 1 or submissions as to why it would be reasonable to dispense with that requirement. In addition the Tribunal noted the wrong legislation was referred to in the s11 notice and asked for a correct one to be served.
5. The Applicants representative responded but did not address the question of notification directly, instead providing evidence that the landlord of the Applicants rented property in England were seeking to recover possession of that property. The Tribunal accepted the application as the lodging requirements were met but issued a direction asking for:-
 - Confirmation if the Applicant provided notification to the tenant that the Property may be recovered under Ground 1 and if so to provide a copy of this or submissions to the tribunal as to why it would be reasonable for the tribunal to dispense with this requirement?
 - To provide a further copy of revised S11 notice that refers to the correct legislation namely the 1988 Act and evidence of serving it on the local authority as the one already lodged refers to the wrong legislation
6. On 21st October the Applicants agent provided a letter addressed to the Respondent from the tenant dated 19th October advising that they required to move back to Scotland to care for Mr Murray's elderly mother, that Mrs Murray wished to move back to be nearer family now she has retired and confirming the house they are renting in England had now been sold.
7. On 10th December 2022 the Respondent wrote a lengthy and detailed letter in response to the application advising that she was not delaying leaving but had expected to be in this Property forever, advising she had 3 daughters two of whom are disabled and a grandson that she looks after who has severe autism. She advised that she was seeking another home but needed time to look and find one and hoped to advise on this by 12th January which was the date of the Case Management Discussion arranged for this property.
8. The Applicants submitted further submissions the day before the CMD on 11th January 2023 enclosing:-
 - a. Further s11 notice this time referring to the 2001 Act.
 - b. Further submissions about family issues and why they required to return to Scotland.
 - c. Evidence to support the fact they had previously lived at the Property.
9. At the CMD on 12th January Mrs Donna Cramb attended on behalf of the Applicants but there was no appearance from the Respondent. The Respondent had been notified of the CMD by sheriff officers and had submitted written representations.
10. In addition shortly before the start of the CMD the Tribunal was sent further submissions from the Respondent advising that the Respondent was not

delaying anything, but she just could not get up and leave due to different circumstances, that she thought this would be her forever home and The notice had put stress and uncertainty on her family. The Respondent concluded by advising she had put in an offer for a house and should be moving on 31st March 2023. although there was no appearance by the Respondent, given her written submissions the tribunal concluded that a full hearing should be heard to allow the correct S11 notice to be lodged and to hear evidence regarding what notice had been given to the tenant prior to the creation of the tenancy that possession might be recovered on Ground 1 and on the question of whether or not it would be reasonable to grant an order for eviction. Mrs Cramb believed that the Applicants may have advised the tenant that they may need the house back.

11. A hearing was scheduled for 10am on 17th April 2023 by teleconference and the parties were both advised they should attend and given the Respondent had indicated that she was seeking to leave and purchase a property with a possible date of entry of 31st March 2023 the Tribunal indicated that if the Respondent did leave the Property and terminate the tenancy then it would be open to the Applicant to withdraw the Application failing which the Tribunal wished to hear from both parties on the question of notice under Ground 1 and secondly the question of reasonableness of granting any order for eviction.

The Hearing

12. The hearing took place by teleconference at 10am on 17th April. Mrs Cramb was in attendance along with both applicants. Mrs Crawford, the Respondent was also in attendance but was unrepresented.
13. Shortly prior to the hearing the Tribunal had been advised that the Respondent had sent an e-mail late the previous day confirming that she hoped to be on the call but that she had an appointment and may not make it, she also advised the house she had hoped to buy had an issue with the sellers not owning all of the land and she had reluctantly had to pull out of the purchase. She further advised that she was now looking for a place to rent but did not feel there was a lot on the market.
14. After the legal member made introductions, the Tribunal invited Ms Cramb to set out her client's position. Mrs Cramb advised that the Applicants were seeking an order for possession. She advised that they had issued the notice to end the tenancy in January last year after Mr Murray's job had changed allowing him to work elsewhere and that he needed to return to support and look after his elderly mother. She advised that the property the Applicants were renting in England had been sold but the sale had fallen through although the English landlord was still trying to sell and wanted the Applicants to move. She advised that the Applicants needed to move back to Scotland and their old home as soon as possible to be closer to Mr Murray's mother and support their granddaughter who has cancer.
15. She advised that she had sent a further S11 notice to the local authority with the correct legislation mentioned on it and although the Tribunal had not received it prior to the hearing it was received during the hearing and appeared to be in order.
16. Mrs Murray then provided evidence advising that they had lived in the Property for 8 years as a family before moving to England and that they had not wanted

to sell it but only rent it out in case they wished to return. She advised they had previously lived all their lives in Lanarkshire and had moved down south for work. They left in November 2016 and Mrs Crawford she confirmed was their first and only tenant to date. She advised that although the sale of their rented home in England has fallen through the agent is contacting them ever two weeks to find out what their position is about moving as the prospective purchaser had pulled out because they wanted to move in quickly and were not able to. She then went on to explain that they need to get back as Mr Murray's Mum has no-one else looking out for her and other family were abroad and unable to help. Mrs Murray then mentioned her granddaughter being ill and got upset so Mr Murray took over and explained that their granddaughter was in hospital in Glasgow away from her family home, that both she and his daughter needed support and that they had been ready to move with boxes packed from last May when the notice period had run out. Mr Murray spoke emotionally of their need to return home, to support their close family and advised of the toll this whole process had taken on them as a family. He advised that Mrs Crawford had always been a good tenant and paid her rent on time and he had no concerns from that point of view, but it was just that they needed their home back and felt their lives had been on hold for several months.

17. Mrs Crawford advised that she is living in the Property with her 3 daughters and one grandson. She advised that she thought she would be moving out into a house she had offered to buy but due to a problem with the titles, the fact the home report had expired and her mortgage offer had expired with no sign of the title issue being resolved she had instructed her solicitor to pull out of the purchase on 4th April. Since then she advised that she had been looking for somewhere to rent but there wasn't much available. The Respondent advised that she had spoken to the council but they had told her there were over 18000 people looking for accommodation and not much available. She also confirmed under questions that 2 of her daughters had disabilities and her grandson who is 3 had autism. She also mentioned she has 2 dogs. The Respondent indicated that she appreciated why the Applicant's wanted to move back and noted she was also wanting to be sorted and had boxes packed and felt she was in limbo.

Findings in Fact

The Applicant and Respondents have entered into a short assured tenancy of the Property from 6th December 2016 to 6th June 2017 and month to month thereafter.

2. The Applicants are the Landlord and served a Form AT5 on the Respondent who is the Tenant prior to the creation of the tenancy.

3. The Tenancy is a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988.

4. The rent is £ 1500 per calendar month.

5. The Applicant has served by recorded delivery, a Notice to quit and AT6 notice dated 10th January 2022 on the Respondent.

The Notice to quit asks the tenant to leave by 6th May 2023 giving notice that they required possession of the Property by May 2022.

6. The AT6 notice specifies that the landlord is relying on Ground 1 of Schedule 5 of the 1988 Act.

7. The Grounds of eviction including Ground 1 are fully set out in

the tenancy agreement which is dated 3rd December 2016

8. The Applicants previously lived in the Property for 8 years as their home before it was rented to the Respondent.
9. The Applicants wish to return to the Property to support their elderly mother and a granddaughter who is ill.
10. The Respondent who is the tenant has not vacated the property
11. The Respondent was trying to buy another house but the purchase is no longer proceeding.
12. The Respondent is now looking for another rental property.
13. The Respondent lives with 3 daughters two of whom have disabilities and a grandson who is autistic.

Reasons

1. The Tribunal accepts from the documentation submitted that the parties entered into a lease of the Property on 6th December 2016, that it was a short assured tenancy as it had an initial period of let of 6 months and has continued since then on tacit relocation. The parties accept the tenancy was entered into and is ongoing. The Applicant has submitted documents showing a Notice to Quit was issued on 10th January asking the Respondent to quit the property by 6th May 2022 which is an ish date and this means the contractual tenancy has come to an end on 6th May 2022 but continued thereafter as a statutory tenancy.
2. The Applicants have also served on the tenant an AT6 notice informing her that they intend to seek possession on Ground 1 of Schedule 5 of the act namely that they wish to move back into the property to live as their home.
3. The Applicants have given the Respondent more than 3 months' notice required at that time due to the Coronavirus (Scotland) Act 2020. The Applicant has served a s11 notice on the local authority as required by the Act and the Tribunal is now satisfied from seeing the most recent S11 notice that it is in the required form.
4. The Tribunal explored with the parties whether written notice was given to the tenant prior to the commencement of the tenancy that Ground 1 may be relied upon. Although neither the applicants nor their representative could confirm that a separate written notice was given, it is noted the full terms of Ground 1 are laid out in the offer to let the Property signed by Ms Cramb addressed to Mrs Crawford and dated 3rd December 2016. Mrs Crawford has signed this offer on 6th December which comprises 4 pages and a 2 page schedule and so the Tribunal was satisfied that either notice had been given in terms of the written terms of the offer to let, or if that offer had not been received prior 6th December when the tenancy commences that it would be reasonable to dispense with the written notice as the details of that were contained in the offer and Mrs Murray had indicated she had made it clear they did not wish to sell the property and in all the circumstances with their substantial connection with the property and family close by it would be reasonable to dispense with written notice. The Tribunal is therefore satisfied that the Applicant has complied with the terms of S18 of the Act and has served the appropriate notices.
5. As all applications for eviction are now discretionary and require the Tribunal to decide if it would be reasonable to grant an order, the tribunal has to come to a decision on reasonableness and consider the interest of both parties. The Applicants have given clear and compelling reasons why they require to move

back and live in the Property. Their work no longer requires them to be in England, they wish to come back to offer support to Mr Murray's elderly mother who lives alone and has no one to look out for her and more recently their granddaughter has been diagnosed with a serious illness and is currently receiving treatment in hospital. They have an adult son and fiancée who also live with them and wish to return to the Property. In addition their own rented accommodation requires to be sold and their tenancy is not stable.

6. The Respondent has advised she was seeking to buy somewhere else and was ready to move. She has not offered any opposition to this application but indicated she wanted further time at the CMD to complete her move. That purchase has now failed due to no fault of the Respondent but this now means she is seeking alternative rented accommodation. She has advised she has family members who have special needs and who live with her and rely on her.
7. Both parties indicated they feel they are living in limbo with their lives on hold.
8. Weighing up the interests of both parties the Tribunal unanimously agreed that it would be reasonable to grant the eviction order. The Applicants first gave notice to the Respondent that they were seeking to move back to the Property in January 2022 over 15 months ago and so the Respondent has had a lot of notice of this intention. Although it is unfortunate the Respondent has not been able to complete her intended purchase as she wished to do, the Tribunal is satisfied that the Applicant's need for possession of the Property is urgent, that any further delay would only add to the stress they have already experienced and that in the whole circumstances it would be reasonable to grant the order. The Respondent will now be entitled to support from the local authority in finding other accommodation and it is noted she was an excellent tenant who will get a good reference from the letting agent which will hopefully assist her in seeking further private rentals.

- Decision

An order for possession is granted.

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.



Jan Todd

Legal Member/Chair

17th April 2023

Date

