

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section under Section 18 of the Housing (Scotland) Act 1988 (“the Act”) and Rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/EV/21/1949

Re: Property at 5/4 Colquhoun Square, Helensburgh, G84 8AS (“the Property”)

Parties:

Mrs Margaret MacDougall, The Caravan, Tigh Lasgair, Moss Road, By Cardross, G82 5HG (“the Applicant”) per her agents Bannatyne, Kirkwood France & Co., Exchange House, 16 Royal Exchange Square, Glasgow, G1 3AG (“the Applicant’s Agents”)

Ms Elizabeth Dickson, 5/4 Colquhoun Square, Helensburgh, G84 8AS (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Gerard Darroch (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for eviction and possession be granted.

Background

1. By application received between 13 August 2021 and 23 December 2021 (“the Application”), the Applicant’s agents applied to the Tribunal for an Order for possession of the Property. The Application comprised a copy of a short assured tenancy agreement between the Parties, copy notice of proceedings in terms of Section 19 of the Act commonly known as an “AT6” citing of Grounds 8, 10, 11 and 12 of Schedule 5 to the Act dated 2 December 2020 together with proof of service, copy statement of rent due and owing and copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Argyll and Bute Council, being the relevant local authority.
2. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the “CMD”) was fixed for 18 March 2022 at 10.00 by telephone conference.

Prior to acceptance, the Applicant's Agents withdrew reliance on Ground 10 as set out in the AT6.

3. The CMD took place on 18 March 2022. The Applicant did not take part and was represented by Ms. Alexandra Woolley of the Applicant's Agents. The Respondent took part on her own behalf.
4. On behalf of the Applicant, Ms. Woolley confirmed the Order sought.
5. The Respondent stated that she disputed the amount of rent arrears but agreed that, when the AT6 was served that there were arrears of at least three months' rent and that some rent lawfully due was unpaid, and so accepted that these Grounds were satisfied. The Tribunal advised the Respondent that as the statutory provisions for the eviction process had been complied with and that as the Grounds had been established, the only matter for consideration by the Tribunal is to determine if it is reasonable to grant the Order and asked the Respondent to explain her personal circumstances. The Respondent advised that she resides at the Property with her three children, two of whom are of school age, that she works part-time on a zero hours' contract, that she intends to vacate the property but has been unsuccessful in obtaining alternative accommodation. On behalf of the Applicant, Ms. Woolley advised the Tribunal that the Applicant is a recently widowed 81-year-old who currently resides in a caravan on her brother's land and that she relies on the rental income to supplement her pension.
6. With the consent of the Parties, the Tribunal conjoined the Application with a payment action HPC/CV/21/1950 and adjourned to a Hearing on 25 March 2022 at 10.00 a.m. The Tribunal issued a Direction in respect of the evidenced required. The Applicant complied with the Direction.

Hearing

7. The Hearing took place on 25 March 2022 at 10.00 am by telephone conference, immediately after the Hearing of the payment action HPC/CV/21/1950. The Applicant did not take part and was again represented by Ms. Woolley of the Applicant's Agents. The Respondent took part on her own behalf. In respect of that payment action, the Tribunal found that rent amounting to £7,554.15 is due and owing by the Respondent to the Applicant, that the Respondent has not paid rent to the Applicant since February 2021 and that the housing benefit which has been paid to the Applicant since March 2021 does not meet the full cost of the rent and so rent arrears continue to accrue.
8. Ms. Woolley addressed the Tribunal in respect of the Applicant's circumstances and explained that the Applicant is 81 years old, is widowed, has recently returned from South Africa with her family to attend to a family ill health emergency. She receives a maximum pension of £400.00 per month and relies on the rental income from the Property to supplement her income. Ms. Woolley explained that the Property is treated by the Department of Work and Pensions as an asset and so the Applicant's monthly pension cannot be increased even though there are arrears of rent. Ms.

Wooley further explained with reference to the productions lodge on behalf of the Applicant that the Applicant currently resides in a caravan on her brother's land, that the caravan is required for workers on that land and that the Applicant now requires possession of the Property for her own residence. Ms. Wooley advised that the Applicant no longer wishes to be a landlord. Whilst having sympathy for the Respondent and her family, Ms. Wooley pointed out that the local authority as housing authority has a statutory duty to assist the Respondent and her school age children.

9. Ms. Dickson addressed the Tribunal that she is a single mother with no family support. She has three children, two of whom are at a local school and that she cannot reside outwith the Helensburgh area as she has caring obligations to her mother. She explained that she had approached the local authority when the notice to quit was served but had been refused homelessness accommodation at that time. She explained that she is unable to obtain private rented accommodation as she cannot pay a tenancy deposit.

Findings in Fact.

10. From the Application, the documents lodged and the Hearing, the Tribunal made the following findings in fact:-
 - i) There is a short assured tenancy between the Parties at a monthly rent of £650.00;
 - ii) Rent arrears began accruing in May 2019 and the Respondent has not paid rent to the Applicant since February 2021;
 - iii) The Respondent has been in receipt of housing benefit which has been paid to the Applicant since March 2021 but this does not meet the full cost of the rent and so rent arrears continue to accrue;
 - iv) The Applicant is an elderly widow who relies on the rent to supplement her income;
 - v) The Applicant currently resides in temporary accommodation which is not suitable for her needs;
 - vi) The Applicant requires possession of the Property in which to reside as her permanent home;
 - vii) The Respondent is a single mother of two school age children and has no family support;
 - viii) The Respondent has a history of underpayment of rent;
 - ix) The Respondent is not able to make payment of the sums due by her to the Applicant;
 - x) If evicted from the Property, the local housing authority will have a statutory duty to assist the Respondent.

Issue for the Tribunal.

11. Having held that the statutory provisions for the eviction process had been complied with and that the Grounds for eviction had been established, the issue for consideration by the Tribunal is to determine if it is reasonable to grant the Order .

Decision and Reasons for the Decision

12. The Tribunal had regard to the whole circumstances of the matter. Whilst the Tribunal had sympathy with the Respondent's position, the Tribunal considered that the Respondent remaining in the property with rent arrears accruing is untenable for

both Parties. The Applicant is entitled to payment of the rent and relies on that rent to supplement a low income. The Respondent's debt to the Applicant is significant and she is unable to make payment. If the Respondent, remains in the Property her debt to the Applicant will increase and the financial burden on her will also increase. If evicted from the Property, the local housing authority will have a statutory duty to assist the Respondent with temporary, if not, permanent accommodation.

13. The Tribunal had regard to the Applicant's current living arrangements and took the view that temporary caravan accommodation is not suitable or desirable for an elderly person.

14. Accordingly, in all the circumstances, it is reasonable to grant the Order sought.

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.

Karen Moore

25 March 2022

Legal Member/Chair

Date