



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/21/2839

Re: Property at 31 Craigiebuckler Terrace, Aberdeen, AB15 8SX (“the Property”)

Parties:

Mr Daniel Shepherd, Mrs Lindsay Mathers, 2 Bleachfield Road, Bridge of Don, Aberdeen, AB22 8RZ (“the Applicants”)

Mr Frank Oluwasegun Ibazebo, Mrs Onose Sikirat Ibazebo, 31 Craigiebuckler Terrace, Aberdeen, AB15 8SX (“the Respondents”)

Tribunal Members:

Nairn Young (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

- Background

This is an application for an order for possession of the Property, which is let to the Respondents by the Applicants in terms of an assured tenancy. It called for a case management discussion (‘CMD’) at 10am on 29 March 2022, by teleconference. The Applicants were present on the call and represented by Mrs Barbara Ellis, of Barbara Ellis Property Leasing. The first-named Respondent called in and spoke on behalf of both Respondents.

- Findings in Fact

1. The Applicants let the Property to the Respondents in terms of a short assured tenancy, with an initial term of 15 November 2017 to 14 November 2018.
2. Prior to the commencement of the tenancy, the Applicants had occupied the Property as their only home and gave notice to the Respondents that they might recover possession of the it on (among others) Ground 1 of schedule 5 to the Housing (Scotland) Act 1988 ("Ground 1").
3. In terms of the tenancy agreement, the lease may be terminated at its ish, either by the Respondents giving 28 days notice, or by the Applicants giving 2 months notice; which failing it will continue to run on a month-to-month basis.
4. Notice to quit terminating the contractual tenancy on 14 November 2021 was served by the Applicants on the Respondents on 21 July 2021.
5. Also on 21 July 2021, a notice of proceedings in form AT6 was served, specifying that the Applicants were relying on Ground 1 and that proceedings would be raised no sooner than 15 November 2021.
6. Notice in terms of s.11 of the Homelessness etc. (Scotland) Act 2003 was served on the local authority on 15 November 2021.
7. The Respondents continue to occupy the Property in terms of a statutory assured tenancy.
8. The Applicants require the Property as their only home.
9. The Applicants are the only landlords under the tenancy and neither of them acquired their interest in it for value.

10. The Applicants were forced to return to Scotland having been working abroad, due to the impending termination of their visa.
11. They are currently without permanent accommodation and are staying with family.
12. They have two children of primary school age, who have attended the catchment school for the Property since their return from abroad.
13. The Applicants are currently having to supplement the rental payments they receive from the Respondents to cover their mortgage repayments on the Property.
14. The Respondents have two children of secondary school age, who attend the catchment school.
15. The Respondents are not currently in work.
16. The Respondents have not identified alternative accommodation.
17. The Applicant's agent offered to help the Respondents find alternative accommodation before Christmas in 2021.
18. The rental market in the Aberdeen area is such that it is possible that the Respondents will be able to find a new home; although that possibility is likely to decrease as the year goes on.
19. It is reasonable in the circumstances for an order for possession to be granted, on the basis that its operation be suspended until after the school exams period.

- Reasons for Decision

20. There was preliminary issue in this case in regard to the notices served on the Respondents. Prior to the service of the correct notices, as narrated above, the Applicants' agents erroneously served notice to leave as if this tenancy were a private residential tenancy. In addition, when this error was corrected, they also served a notice in terms of s.33 of the Housing (Scotland) Act 1988 and originally sought to rely on the fact that the tenancy was a short assured tenancy to recover possession. This was changed before the application was accepted by the Tribunal so that it is clear that the application now proceeds under rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017, on the basis of Ground 1.

21. Perhaps because of that history, the Respondents understood that they had been given insufficient notice (i.e. had not received 6 months notice). They therefore sought only to oppose the application on that basis.

22. The Tribunal confirmed the facts of the application as above, and concluded that the proper procedure had ultimately been followed and that the basis of the ground had been made out. However, notwithstanding the Respondents' lack of any formal opposition to the granting of an order on the grounds of reasonableness, the Tribunal considered itself bound in law to proceed to consider that question.

23. On balance, the Tribunal considered that it was reasonable to grant the order. In effect, it was being asked to weigh the interests of one family having a secure roof over its head against another, which made this evaluation very difficult. However, it noted that the tenancy had been entered into as a short-assured tenancy and explicitly on the basis that the Applicants may return and seek to recover it as their only or principal home. The Respondents therefore must have had some expectation that this turn of events would come to pass and that their security of tenure would be limited to that extent, at least. Should they be unsuccessful in this application, the Applicants would be able

to apply for an order on the basis that the short assured tenancy had come to an end.

24. Against that background, the Tribunal also noted that the Applicants were in effect currently paying for a home which they were unable to occupy, given the position in regard to the level of mortgage payments. If they were forced to sell the Property to buy another, it would not be to the benefit of either party to the application.

25. The Tribunal further noted that the rental market in the area was not such that it would be impossible for the Respondents to find accommodation, but that that position may change for the worse if their search was further delayed. It accepted that a move would be stressful for the Respondents and create upset for them. In particular, there would be the risk of an impact on the stability of their children's schooling. Nonetheless, it determined that that risk could be mitigated to some extent by the suspension of operation of any order to after the coming exam period.

26. Taking all these factors into account, the Tribunal concluded that it was reasonable for the order to be granted.

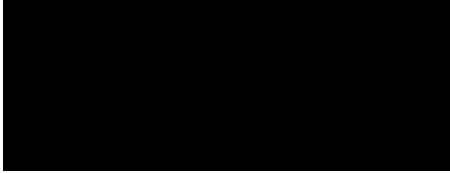
- Decision

Order for recovery of possession 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.



29 March 2022

Legal Member/Chair

Date