



**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/23/2336

Re: 19 Dunvegan Avenue, Kirkcaldy KY2 5SG (“Property”)

Parties:

Bijan Habibollahi, 41 Balwearie Road, Kirkcaldy KY2 5LT (“Applicant”)

**Charles Wood & Son, 37 Kirk Wynd, Kirkcaldy KY1 1EN (“Applicant’s
Representative”)**

Carrie O’Neill, 19 Dunvegan Avenue, Kirkcaldy KY2 5SG (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Tony Cain (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined not to make an order for possession of the Property in
terms of section 18 of the Housing (Scotland) Act 1988 and dismissed the
Application.**

Background

The Applicant sought recovery of possession of the Property in terms of Section 18 of the Housing (Scotland) Act 1988 (“1988 Act”). The Applicant had lodged with the Tribunal Form E. The documents produced were a Tenancy Agreement dated 17 November 2007; an AT6 dated 8 June 2023; royal mail proof of delivery on 9 June 2023; Notice in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering letter dated 13 July 2023 and a certificate of service by sheriff officers evidencing service of the Application on the Respondent on 20 October 2023.

On 2 November 2023 Ryan O’Neill lodged a written representation in which he stated that he had ceased to be a tenant of the Property in July 2022. On 6 November 2023 the Respondent lodged a written representation. On 29 November 2023 the Applicant’s Representative emailed the Tribunal stating that the Applicant accepted that Ryan O’Neill ceased to be a tenant of the Property in July 2022.

Case Management Discussion

A case management discussion (“CMD”) took place before the Tribunal on 29 November 2023 by conference call. At the CMD the Applicant was represented by Graham Reid of the Applicant's Representative. The Respondent was represented by her daughter Katelynn O'Neill. Mr Reid confirmed to the Tribunal that Ryan O'Neill should be removed as a respondent to the Application.

On 23 November 2023 the Tribunal contacted the Applicant's Representative by email as follows :

“The Tribunal notes that the tenancy is a short assured tenancy under the Housing (Scotland) Act 1988. An AT6 has been served on the Respondent stating that an order for possession is sought under grounds 11, 12 and 14. The papers do not include a copy notice to quit. In those circumstances the Tribunal proceeds on the basis that the tenancy continues to be an assured tenancy. The Tribunal notes that the tenancy agreement does not set out the grounds for eviction. In terms of section 18(6) of the 1988 Act the Tribunal shall not make an order for possession of a house let on an assured tenancy unless the ground for possession is any of the grounds in part II of schedule 5 and the terms of the tenancy make provision for it to be brought to an end on the ground in question. Reference is made to Royal Bank v Boyle 1999 Hous LR63 and Eastmoor LLP v Bulman 2014 GWD 26-529. On the basis of the papers produced to date, it seems to the Tribunal that section 18(6) of the 1988 Act applies which would prevent the Tribunal from making an order for possession even if it was minded to do so. The Tribunal will of course hear submissions from the Parties on the point at the case management discussion.”

The Tribunal asked Mr Reid if a notice to quit had been served. He said that he understood that a notice to quit and section 33 notice may have been served prior to his involvement with the case and that he had raised certain queries with the Applicant regarding the validity of the notice to quit. The Tribunal asked Mr Reid to comment on the issue raised by the Tribunal regarding section 18(6) of the 1988 Act. Mr Reid said that he accepted that the tenancy agreement does not comply with what is required by section 18(6). He said that he was considering amending the ground for eviction to ground 1(b). He said he required to investigate matters further with the Applicant before he could seek to amend as ground 1(b) only applies if no consideration had been paid for the property. He was aware that the title sheet indicated consideration of £105,000. Mr Reid noted that this ground for eviction was set out in the tenancy agreement at clause 12(b). Mr Reid asked the Tribunal to continue the Application to a further CMD.

Reasons for the Decision

The Tribunal determined not to make an Order for possession of the Property in terms of Section 18 of the 1988 Act.

In terms of section 18(6) the Tribunal shall not make an order for possession of a house let on an assured tenancy unless the ground for possession is any of the grounds in part II of schedule 5 and the terms of the tenancy make provision for it to be brought to an end on the ground in question. On the basis of the documentation lodged, the tenancy had not been brought to an end and was continuing. Section 18(6) therefore applied. The tenancy agreement produced did not set out the grounds for eviction founded upon being grounds 11, 12 and 14.

The Applicant's Representative had told the Tribunal there was the possibility of the Applicant seeking to amend the ground for eviction to ground 1(b) in schedule 5 to the 1988 Act which states :

“(b) the landlord who is seeking possession ...requires the house as his or his spouse's or civil partner's only or principal home, and neither the landlord, 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.”

The title sheet indicated that the landlord's interest in the tenancy had been acquired for value. Whilst Mr Reid had told the Tribunal that the question of payment of a consideration required to be investigated further it seemed to the Tribunal that it would not be in the interests of justice to continue the Application particularly in light of the written representation lodged on behalf of the Respondent in which the Tribunal had been told that the Respondent has severe bipolar and depression. It would be open to the Applicant to raise a fresh application once investigations had been completed if they indicated that ground 1(b) could be established.

Decision

The Tribunal determined not to make an Order for possession of the Property and dismissed the Application.

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.

Legal Member:



Date : 29 November 2023