



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, as amended (“the 1988 Act”) and Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/23/3260

Re: Property at 14 Mearns Road, Motherwell, ML1 3LE (“the Property”)

Parties:

Mrs Danielle Morrison, 14 Hillhead Crescent, Motherwell, ML1 4AE (“the Applicant”)

Miss Kirsty Barrie, 14 Mearns Road, Motherwell, ML1 3LE (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

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

Background

1. By application received on 15 September 2023, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Section 18 of the 1988 Act against the Respondent. The application sought recovery in terms of Ground 1 of Schedule 5 to the 1988 Act (landlord requires house as principal home). Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, the Notice to Quit and AT6/proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003/proof of service of same and an Affidavit from the Applicant.

2. Following initial procedure, on 3 October 2023, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. Notification of the application and details of the Case Management Discussion (“CMD”) fixed for 29 November 2023 was served on the Respondent by way of Sheriff Officer on 24 October 2023. Following said notification, written representations were lodged timeously by the Respondent by email on 8 November 2023 and circulated to the Applicant’s representatives.

Case Management Discussion

4. A Case Management Discussion (“CMD”) took place by telephone conference call on 29 November 2023 at 10am, attended by both parties. Also in attendance was Miss Kirsty Donnelly, Solicitor, of TC Young on behalf of the Applicant and Ms Simone Callaghan, Paralegal, also of TC Young, as an observer only.
5. Following introductions and introductory remarks by the Legal Member, there was discussion regarding the eviction application and the Respondent’s response to that. The Legal Member explained that, whether or not the application is opposed, the Tribunal still requires to be satisfied that the application was technically in order, that the ground for eviction had been established and that it is reasonable in all the circumstances for the Tribunal to grant the eviction order.
6. Miss Donnelly was asked to address the application on behalf of the Applicant. Her submission was that there was sufficient material in front of the Tribunal today in order for the Tribunal to grant the order sought. It appeared from the Respondent’s representations and her initial comments today that she is not opposing the application, albeit that she has taken issue with some of the detail provided in support of the application. Miss Donnelly stated that the Notice to Quit and Form AT6 had been properly served. The Applicant had previously lived at the Property herself and now requires it back for herself to live in. Miss Donnelly explained that the Applicant’s previous and current situation is known to the Respondent as there is a family link between the parties. The Respondent is the ex-partner of the Applicant’s brother and the Respondent’s children are the Applicant’s nieces. Miss Donnelly explained that there is an update to the Applicant’s circumstances since the application was lodged, which updates the written submissions put in in support of the application. The Applicant has now had to move out of the former matrimonial home, where she had continued to reside with her husband and three children and is now residing with a family member in their spare room. She requires to share the bedroom with her two sons, aged 7 and 13 so now urgently requires the Property back. Miss Donnelly stated that the respondent is entitled to have her say. However, in her submission, Ground 1 is established and it is also reasonable for the Tribunal to grant the order sought. The Applicant is suffering from stress and is off work. She has provided Miss Donnelly with a letter from her GP explaining that she is currently on medication and unfit for work. Miss Donnelly has not

lodged the letter as she has only obtained it from her client this morning but can do so if required. The Applicant herself has also previously presented as homeless but is not eligible for local authority accommodation because she is working and also owns this Property. The situation is also having financial impacts on the Applicant as arrears are accruing and she is having to continue to meet the mortgage and other associated housing costs. As to the Respondent's circumstances, Miss Donnelly submitted that an eviction order may well, in fact, assist her in obtaining alternative accommodation through the local authority. She appreciates the Respondent's concerns about being evicted over the festive period. However, she explained that, in terms of the Cost of Living (Tenant Protection)(Scotland) Act 2022 ("COLA"), any order granted will be subject to the moratorium on evictions, meaning that it will be well after the festive period, indeed, not until the end of March 2024, until this eviction order can be enforced. In response to questions from the Tribunal Members, the Applicant herself provided the address at which she is temporarily staying but indicated that this is really a temporary 'care of' address only as she is still officially registered at the former matrimonial home. She confirmed that she has been staying with the family member for a few weeks and that her eldest son remains at the former matrimonial home as all his things are there. The Applicant advised that it is not an option for her to continue living at the former matrimonial home and her husband to move out. The title and mortgage are in his name alone and he has refused to move out, even temporarily.

7. The Respondent was asked to confirm her position regarding the ground of eviction being relied on by the Applicant. She confirmed that the Property was previously the Applicant's principal home and that she totally understands why the Applicant needs the Property back to live in. She does not oppose the application and has been trying to obtain local authority accommodation since March 2023. She has been in touch with the local authority so many times but keeps being told the same thing. She has the highest housing points you can get but, until the Tribunal order is in place, she will not be offered anything. She confirmed that the accommodation she needs is for herself, her two daughters aged 22 and 14 and her grandchild of 10 months. Her other daughter no longer lives with her. She did not wish to say anything else, other than what had been stated in her representations and reiterated that she and her daughters just want the current process to come to an end so that their situation can be resolved. The Respondent confirmed that she was reassured by what had been said at the CMD regarding the eviction delay protections in place currently.
8. The Tribunal Members discussed briefly and advised that the eviction order will be granted. The Legal Member confirmed the process which will now follow and thanked everyone for their attendance.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.

2. The Respondent is the tenant of the Property by virtue of an Assured Tenancy which commenced on 29 April 2017.
3. The Respondent is still in occupation.
4. The Applicant previously occupied the Property as her own home from around 2010 to 2017.
5. The Applicant, due to a change in her own circumstances, now requires the Property as her only or principal home.
6. Clause 7 of the tenancy agreement gave the Respondent notice that the tenancy may be recovered on this ground.
7. A Notice to Quit and AT6, both in proper form and giving the requisite period of notice were served on the Respondent by Sheriff Officer on 27 April 2023, bringing the contractual tenancy to an end on an ish date (29 June 2023) in terms of the tenancy.
8. The Tribunal application was submitted on 15 September 2023.
9. The Respondent lodged written representations but did not oppose the application.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, the Respondent's written representations and the oral information provided at the CMD by both parties and by the Applicant's representative, Miss Donnelly.
2. The Tribunal found that the application was in order, that a Notice to Quit and AT6 in proper form and giving the correct period of notice had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 1988 Act.
3. The application was on Ground 1 of Schedule 5 to the 1988 Act, which states as follows:-

“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 First-tier Tribunal is of the opinion that it is reasonable to dispense with the requirement of notice and (in either case)—

(a) 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

(b) the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them requires the house as his or his spouse's or civil partner'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."

The Tribunal considered that all elements of the ground of eviction were met. There was no dispute that the Applicant had previously resided in the Property as her principal home, nor that she required to recover possession and live there again, given her marital breakdown and current family and financial circumstances. The Tribunal was also satisfied, with reference to the requirement of Section 18(4) of the 1988 Act that it was reasonable, having regard to all of the circumstances, to grant the eviction order sought. The Tribunal had regard to the Applicant's current circumstances, as narrated above, and to the additional information provided at the CMD in relation to her personal and family circumstances. The Tribunal also had regard to the circumstances of the Respondent, particularly that she requires to find alternative accommodation for herself, two children and a grandchild. However, the Tribunal noted that the Respondent did not wish to oppose the order being granted as she understood the Applicant's position and understood from the local authority that her housing application will move forward if an order is granted. The Respondent stated several times that she and her daughters just wished the situation resolved so that they can move on and that her main concerns had been about the timescale for the eviction taking place. The Tribunal is aware that, in granting the order today, that there will be a delay of some months before the order can be enforced in terms of the "COLA" protections which will hopefully provide the Respondent with an opportunity to secure alternative accommodation meantime. In all these circumstances, the Tribunal considered it reasonable to grant the eviction order.

4. The Tribunal accordingly determined that an order for recovery of possession of the Property could properly be granted at the CMD as there were no facts in dispute nor any other requirement for an Evidential Hearing.

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/Chair

29 November 2023
Date