

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 18(1) of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/23/2649

Re: Property at 7 Ridge Court, Bathgate, EH7 8FB (“the Property”)

Parties:

Mr Mark McGregor, 1 South Couston Crofts, Armadale, Bathgate, EH48 4LG (“the Applicant”), and

and

Let Link Ltd, 5 Wellgate Street, Larkhall, ML6 2AG (“the Applicant’s Representative”) and

Mr Ian Stuart McKay, 7 Ridge Court, Bathgate, EH7 8FB (“the Respondent”)

Tribunal Members:

G McWilliams- Legal Member

T Cain - Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determines as follows:

Background

1. This is an Application brought in terms of Rule 66 (Application for order for possession upon termination of a short-assured tenancy) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure (“the 2017 Rules”).

2. The Applicant, Mr McGregor, and his Representative had provided the Tribunal, in the Application, with copies of the parties' short assured tenancy agreement, Form AT5, Notice to Quit and Sections 33 and 11 Notices with relevant Executions of Service. All of these documents and forms had been correctly and validly prepared in terms of the provisions of the Housing (Scotland) Act 1988 ("the 1988 Act"), and the procedures set out in the Act had been correctly followed and applied.
3. The Respondent, Mr McKay, had been validly served by Sheriff Officers with the Application papers, Guidance Notes and Notification of the CMD from the Tribunal on 9th November 2023, and the Certificate of Service was produced.

Case Management Discussion on 21st December 2023

4. A Case Management Discussion ("CMD") proceeded remotely by telephone conference call at 2pm on 21st December 2023. Mr McGregor attended. He stated that he had agreed with his Representative's Mr Rollo that he would deal with matters at the CMD himself. Mr McKay did not attend and there was no explanation for his absence.
5. Mr McGregor stated that he did not expect Mr McKay to attend the CMD. He said that he had previously started an eviction process in early 2022 but this did not go forward as there was a date error in his papers. Mr McGregor stated that, during the original eviction process, Mr McKay had applied for alternative, social housing and was told by his local authority that an eviction order would have to be granted before the application could proceed. Mr McGregor said that he has not spoken to Mr McKay for around 1 year but understands that Mr McKay is waiting for an eviction order to be granted so that he can go on with his housing application. He said that Mr McKay has not been in employment since the parties' tenancy agreement started in 2014 and that rent monies, in a lesser amount than the monthly rental sum due of £625, are paid directly to him by DWP as a result of Mr McKay's entitlement to benefit. Mr McGregor stated that he understands that Mr McKay is aged over 50, resides alone and that he is not aware of Mr McKay having health issues. Mr McGregor said that he has 12 rental properties and asked for the order for eviction to be granted so that he can obtain funding to assist with the cost of a new home which he is currently building.

Statement of Reasons

6. In terms of Section 33 of the 1988 Act, the Tribunal shall make an order for possession of a house let on a tenancy if:
 - (a) the short assured tenancy has reached its ish;
 - (b) tacit relocation is not operating;
 - (c) no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and
 - (d) the landlord has given to the tenant notice stating that he requires possession of the house.

7. The Tribunal considered all of the Application papers, including the parties' short assured tenancy agreement and the Form AT5 and Notice to Quit, which had been served on Mr McKay, as well as the submission of Mr McGregor.
8. Mr McKay had not lodged representations with the Tribunal regarding the Application and, in particular, the reasonableness of the grant of an eviction order. Mr McKay had not attended the CMD to provide any evidence, and/or make any submission, to oppose and contradict the basis for the order sought by Mr McGregor.
9. The Tribunal therefore finds in fact that the parties' tenancy agreement has been terminated and Mr McGregor has given appropriate notice to Mr McKay that he requires to recover possession of the Property as a result of his service of the appropriate documentation on Mr McKay. The Tribunal finds in law that the criteria in Section 33 of the 1988 Act have been satisfied and determines that it is reasonable that an eviction order be granted
10. Accordingly, the Tribunal grants an eviction order.

Decision

11. In the circumstances, the Tribunal makes an order for possession of the Property as sought in this 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.

G McWilliams
Legal Member

21st December 2023
Date