



**Decision 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/23/3013

**Re: Property at Shawfair Farm House, Newton, Dalkeith, Midlothian, EH22 1SG
("the Property")**

Parties:

**Shawfair LLP, 27 Silvermills Court, Henderson Place Lane, Edinburgh, EH3 5DG
("the Applicant")**

**Mr Edward James Leslie, Shawfair Farm House, Newton, Dalkeith, Midlothian,
EH22 1SG ("the Respondent")**

Tribunal Members:

Gabrielle Miller (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the order for recovery and possession should be granted in favour of the Applicant. This order cannot be enforced before 31st July 2024.

Background

1. An application was received by the Housing and Property Chamber dated 29th August 2023. The application was submitted under Rule 65 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Regulations"). The application was based on the Respondent not adhering to ground 6 of the Housing (Scotland)(Act) 1988 ("the Act").
2. On 28th November 2023, all parties were written to with the date for the Case Management Discussion ("CMD") of 15th January 2024 at 10am by teleconferencing. The letter also requested all written representations be submitted by 19th December 2023.
3. On 22nd November 2023, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondents by letterbox service

and first class post. This was evidenced by Certificate of Intimation dated 22nd November 2023.

4. On 5th January 2024 Applicant's solicitor emailed the Housing and Property Chamber noting that there was no objection to the Respondents postponement request to allow for them to take legal advice. The CMD was postponed on this basis. This email also had information about the planning application.
5. On 6th January 2024 Applicant's solicitor emailed the Housing and Property Chamber with a submission regarding the acceptance of there not being an AT5 contained within the papers.
6. On 9th April 2024 the Principal Environmental Health Officer for Midlothian Council emailed the Housing and Property Chamber to state that the Property fell below the Tolerable Standard. It was noted in the email that the Respondents had applied for local authority housing.
7. All parties were informed of the new date of 25th April 2024 at 10am by teleconferencing.
8. The case was conjoined with case FTS/HPC/EV/23/3014

The Case Management Discussion

9. A CMD was held on 25th April 2024 at 10am by teleconferencing. The Applicant was not present by Ms Rhona Wark, Consultant, BTO Solicitors LLP. The Respondent were present and represented themselves. Ms Sharon Birrell, the Respondents daughter, was present for moral support for the Respondents.
10. Ms Wark told the Tribunal that the property was in a very poor condition. The property dates back to the 1800s. It is in the middle of an area of land which is being developed by the Applicant. Ms Wark said that the development which the Applicant is undertaking cannot happen when the property remains there. The Property cannot remain on the land due to its condition. She noted that while it does need to be demolished soon it does not need to be demolished immediately. Basic remedial repairs have been undertaken to ensure the health and safety over the Respondent but further repairs cannot be undertaken due to the poor condition of the property. She noted that the notice was served upon the Respondent in January 2023 and an application was not submitted to the Housing and Property Chamber until August 2023. She is concerned that the Respondent ends up continuing to be in the property in the winter period. There is no knowing what the winter weather conditions may do to the property and could put the Respondents responded in further danger.
11. The Respondent said that he and his wife have been trying to get the Property fixed for a number of years. They have stopped paying the rent for the last two payments. As they pay 6 monthly this means they have not paid for over a year. They have withheld this rent money and have written to the Applicant to advise that they have withheld it. They are willing to transfer the money over if the

repairs have been completed. However, they accept that the Property needs to be demolished. They note that some repairs have been done to the Property as mentioned by Ms Wark.

12. The Respondent has spoken to his local authority about being rehoused. The Respondent and his wife require a house on the flat due to mobility issues. Ms Wark said that the Respondent has been in contact with the council and she has also been in contact with the local council. One issue is that the Respondent have five dogs which need to be accommodated with them. The Respondent told the Tribunal that these are five very old Staffordshire bull terrier dogs which must be rehoused with them. The Respondent confirmed that he has also been put on the common housing plan that which incorporates all local housing association properties. He has been told by his local council that he will go into temporary accommodation before being given permanent accommodation. He does not want to do that because of he and his wife are in their seventies.
13. The Tribunal wanted to investigate with the Respondent whether an AT5 had been signed by the parties. The Respondent does not remember signing the later AT5 or not. He is dyslexic and needs assistance with paperwork. It was a substantial time ago and as such he is not able to remember if that was signed or not.
14. Ms Wark said that the Respondent has another property. The Respondent confirmed that he does own a 3 bedroom property. It is not appropriate for his medical needs his and his wife's medical needs. Currently his other daughter is living in that property. She would require to be evicted to be rehoused by the local council before he could gain access to it. This would mean that he would need to go through the Tribunal process with her that to enable to be rehoused to an inappropriate household. If that were to happen then he may sell the property so that he can purchase another property for himself at the future date but at the moment that property is not accessible for him or his wife.
15. Ms Wark noted that the Applicant is a landlord in succession as they took over the Property from the previous owner. This tenancy dates back to 1993 when the Respondent first moved into the Property. The Respondent said that he and his wife are a very reluctant to leave given that they have been in the property since 1993. However, they did accept that it may be the Tribunal's decision to grant the order for eviction to allow the Property to be demolished
16. The Respondent said that he has not been able to look at private rented tenancies as an alternative to this one as they are very expensive with very few on the market.
17. The Tribunal noted that there is a conjoined case under rule 66 in addition to this case which is under rule 65. This case being, being ruled 65, has made the adequate terms for granting an order for eviction. The Tribunal was satisfied that in order for eviction could be granted.

Findings and reason for decision

18. The parties entered into a what was purported as a Short Assured Tenancy on 28th May 1993 for a 5 year period. An AT5 was not lodged as it was not able to be located. The rent payments of £2400 are due 6 monthly.
19. The Property has fallen below the Tolerable Standard. This is accepted by both parties.
20. The Respondent would have preferred to continue to live in the Property had it been able to be repaired. As it is not able to be repaired he accept that it is the only option to demolish the Property.
21. Only essential repairs have been completed in the Property to ensure the health and safety of the Respondents.
22. The Respondents have registered as homeless. They have not been allocated a property. They have mobility issues which requires a ground floor property. They also have 5 very elderly dogs which the local authority are aware of.
23. The Applicant is selling the land around and including the Property for a much larger development.
24. There were no issues of reasonableness that prevented an order for eviction being granted.

Decision

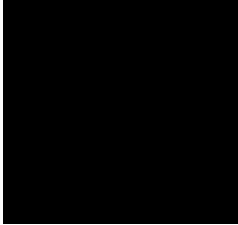
25. The Tribunal found that ground 6 has been established and the granted an order in favour of the Applicant. The Applicant is entitled to an Order for recovery of possession.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the Tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the Tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.



25th April 2024

Legal Member/Chair

Date