



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/23/4605

Re: Property at 59 Calside, Paisley, PA2 6DH (“the Property”)

Parties:

Mrs Margaret-Rose Hargadon, 37 Anchor Crescent, Paisley, PA1 1LX (“the Applicant”)

Mr Sean Rodden, 59 Calside, Paisley, PA2 6DH (“the Respondent”)

Tribunal Members:

Yvonne McKenna (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

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.

Background

1. An application was received by the Housing and Property Chamber dated 20 December 2023. The application was submitted under Rule 65 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). The application was based on ground 1 of the Housing (Scotland) (Act) 1988 (“the Act”), namely that the Applicant wishes to live in the Property.
2. On 30 April 2024, all parties were written to with the date for the Case Management Discussion (“CMD”) of 6 June 2024 at 10am by teleconferencing. The letter also requested all written representations be submitted by 21 May 2024.
3. On 1 May 2024, sheriff officers served the letter with notice of the CMD date and documentation upon the Respondent by letterbox service. This was evidenced by Certificate of Intimation dated 1 May 2024.
4. The Respondent did not lodge any written representations.

5. The application for eviction was conjoined with an application for payment in respect of rent arrears under Chamber Reference FTS/HPC/CV/23/4607.

6. The documents lodged with the application for eviction were;-

- Affidavit of the Applicant dated 26 February 2024
- Tenancy agreement
- Notice to Quit
- AT6 under Ground 1
- Sheriff Officers Execution Service re Notices
- Section 11 Notice
- E-mail to Local Authority intimating Section 11 Notice

The Case Management Discussion

7. The Tribunal proceeded with the CMD on 6 June 2024 by way of teleconference. The Applicant was represented by Ms Callaghan from TC Young solicitors. There was no appearance by, or on behalf of the Respondent, despite the teleconference starting 5 minutes late. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations, and accordingly proceeded with the CMD in his absence. Ms Callaghan advised that the Respondent had not been in touch with either the Applicant, or her firm, since the application was made to the Tribunal. She said that the relationship between the parties had broken down.

8. Ms Callaghan invited the Tribunal to grant the order for Eviction. She said that as far as the Applicant is aware, the Respondent is still resident in the Property.

9. She made reference to the Applicant's Affidavit. This Affidavit confirmed the Applicant's position in that she wishes to return to live in the Property. She is the heritable proprietor of the Property. She purchased the Property in October 2013. She initially purchased the Property with the intention that her son would rent the Property from her and occupy the Property as his principal home. The Applicant's son occupied the Property for a period of approximately 5 weeks. The Applicant was then told by her local authority benefits department that her son could not claim Housing Benefit in respect of the Property, as the Applicant, his mother, was the landlord. Therefore her adult son moved back in to reside with her for approximately 6 months before seeking private lets.

10. When the Applicant let the Property to the Respondent, he was aware that the Applicant initially purchased the Property with the intention that it would be her son's principal home.

11. The Applicant's partner has recently undergone cancer surgery and is awaiting a triple bypass heart operation. On 4 January 2024 he required extensive abdominal surgery due to complications with his previous cancer operation. Due to his health conditions he cannot use stairs. He presently resides in sheltered housing in

Cumbernauld. His property has stairs and he is therefore currently sleeping downstairs on a pull-down bed.

12. At present, the Applicant requires to travel daily to his home in Cumbernauld to care for her partner, and assist him to hospital appointments. He requires to live in a property with no stairs. The Applicant's current property in Paisley is not suitable as it has stairs. The Property is a ground floor flat with no stairs and access via the front and back door.

13. The Applicant's son has bi-polar disorder and is on the autistic spectrum. The Applicant is his primary carer. She requires to assist him to psychiatry appointments, and for medication and food shopping. He presently resides in a private let. It is his third let property and there are issues with him continuing to reside there. It is the Applicant's intention that her son will move into her current accommodation. Her son has issues with being around people, suffers from severe anxiety and can only tolerate minimum input from anyone, including the Applicant. The Applicant requires to visit him daily to gauge his state of mind. Residing at the Property would allow for her to reside close to her son in Paisley and provide him with stability and support, whilst giving him his own independence.

14. The Applicant works full time, whilst caring for her partner in Cumbernauld, and her son in Paisley. The strain of travelling most days to between Cumbernauld, Paisley and her work is having a detrimental effect on her physical and mental health.

15. The Property is subject to a mortgage. The Applicant's current circumstances are such that she cannot afford to rent or purchase another property. She wishes repossession of the Property so that she can reside there for the foreseeable future.

16. Ms Callaghan said that the Applicant believes that the Respondent is approximately 40 years of age. He has no known household members resident in the Property with him. He had previously been in employment as a Physical Training Instructor with Renfrewshire Council. It is no longer believed to be the position that he remains in this employment. The Applicant is unaware of his current employment or personal circumstances. There have been no recent visits made by the Applicant to the Property. The parties had enjoyed a good relationship until these proceedings were commenced and the relationship broke down. The Applicant has never increased the rental.

17. Ms Callaghan was unable to provide any information regarding the Applicant's position when the tenancy agreement was commenced, in relation to why no notice had been served at that date, or prior to the tenancy agreement commencing, that the Applicant may seek to recover possession under Ground 1.

18. She invited the Tribunal to also consider when assessing reasonableness of granting the order for eviction, to take account of the rent arrears on the Property. The Respondent was, at the date of the CMD, due rent from November 2023 amounting to £2205. No rent has been paid at all for the past 7 months.

Findings in Fact

19. The Applicant entered into an Assured Tenancy Agreement dated 12 November 2015 with the Respondent.

20. At the time the tenancy agreement was entered into the Respondent was dating a colleague of the Applicant and the parties enjoyed a good relationship.

21. In terms of the Assured Tenancy Agreement the Respondent agreed to pay rent of £315 per calendar month, said payments being due on the 12th day of each month, and due monthly in advance.

22. The Respondent started to accrue arrears from November 2023. The Respondent has been in arrears of rent ever since. The Respondent was in arrears of £630 as at the date of the application, and £2205 at the date of the CMD.

23. Prior to the agreement being entered into between the parties the Respondent was not provided with Notice that possession may be recovered under Ground 1 of section 18 of the Act.

24. On 7 September 2023, the Applicant served upon the Respondent a Notice to Quit. In terms of the Notice to Quit, the Applicant gave notice to the Respondent that he was required to remove from the Property on or before 12 November 2023.

25. In terms of Section 19 of the Housing (Scotland) Act 1988, the Applicant served a Form AT6 under Ground 1 providing notice of her intention to raise proceedings for possession of the dwelling house from the Respondent. Said Notice of Intention to raise Proceedings was dated 7 September 2023. In terms of the said Notice as intimated, the proceedings before the Tribunal could not be raised before 12 November 2023.

26. The said Notice was in force at the time of raising the proceedings on 20 December 2023.

27. It is reasonable to dispense with the fact that no notice under Ground 1 was provided to the Respondent.

28. The Applicant requires the possession of the Property in order to reside there with her partner, and it is reasonable to grant the Order for Eviction.

Reasons for Decision

29. The Tribunal considered all of the written documents along with the submissions made by Ms Callaghan and determined that in all the circumstances it was reasonable to grant the Order for Eviction.

30. Appropriate notices were given to terminate the tenancy by the Applicant to the Respondent.

31. In terms of reasonableness, the Applicant requires possession of the Property in order to reside there and occupy the Property as her only or principal home. The Applicant's personal circumstances are such that her current home is no longer suitable to her and her partner's physical needs. The Property is a ground floor flat with no stairs and with front and back access and is suitable to her needs.

32. The Applicant cares for her partner and her adult son and is in full time employment. Currently she requires to travel to her partner's home in Cumbernauld daily, in order to care for him, and drive him to hospital appointments. The Applicant's partner is unable to reside in the Applicant's current property due to the stairs. The Property fits the required needs for both the Applicant and her partner. The Applicant would no longer require to travel between Cumbernauld and Paisley and would be there for emergencies.

33. Additionally the Tribunal have had regard to the fact that the Respondent has accrued rent arrears of £2250.

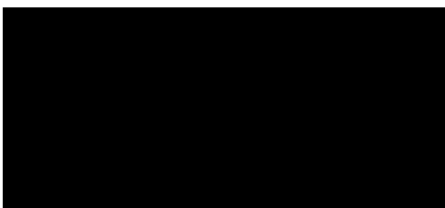
34. In all the circumstances it is reasonable to dispense with the fact that no notice under Ground 1 was provided to the Respondent at the outset of the tenancy and it is reasonable to grant an order for repossession.

35. There were no issues of reasonableness preventing the application being granted.

36. The Tribunal found that ground 1 has been established and 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.



Legal Member/Chair

6 June 2024

Date

