

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)**

Chamber Ref: FTS/HPC/EV/24/0194

Re: Property at 7 Albany Terrace, Midshore Road, Newburgh, KY14 6BE (“the Property”)

Parties:

Ms Tracey McConnell-Wood, Bloomfield, Newburgh, KY14 6EY (“the Applicant”)

Mr Jason Orrock, 7 Albany Terrace, Midshore Road, Newburgh, KY14 6BE (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

BACKGROUND

1. By Lease dated 22nd February 2017, Tracey McConnell-Wood let the Property to the Respondent. Prior to the lease being signed a form in terms of s32 of the Housing (Scotland) Act 1988 (“The 1988 Act”) – commonly referred to as a form AT5 - was served upon and signed by the Respondent. The lease is, accordingly, a short assured tenancy in terms of the 1988 Act.
2. A notice to quit and a notice in terms of s33 of the 1988 Act were served upon the Respondent on 31st January 2023.
3. A notice in terms of s11 of the Homeless Etc. (Scotland) Act 2003 was intimated to the local authority.

4. An application was presented to the Tribunal seeking an order for eviction. The application was dated 14th January 2024. The application advised the Applicant was suffering from ill health and intended to sell the Property with a view to regulating her affairs prior to her passing.
5. Unfortunately, the Applicant passed away on 2nd February 2024. The application thereafter proceeded in the name of the executors of the Applicant.

THE CASE MANAGEMENT DISCUSSION

6. A case management discussion was conducted by teleconference at 2pm on 10th May 2024. The Applicants, the executors of the late Tracey McConnell-Wood, were represented by Mr C Gordon of Messrs Thorntons Law LLP. The Respondent participated personally.
7. Mr Gordon, on behalf of his clients, confirmed he was seeking an order for eviction. It was the intention of the executors to sell the Property as part of the winding up of the estate of the late Tracey McConnell-Wood. A market valuation report from bona fide surveyors was provided to the tribunal to evidence the intention to sell.
8. The Respondent advised the Tribunal that, at present, he was not willing to consent to the application. He went on to explain that he understands the circumstances in which the application has been presented. He was not wishing to be deliberately obstructive and, in principle, accepted that he would require to vacate the premises in due course to enable the estate to be wound up but, having regard to his own personal circumstances, was not in a position to consent to an eviction order immediately.
9. The Respondent is a 54 year old male who lives alone at the Property. He has lived there since the commencement of the tenancy. There have been no issues in relation to the tenancy nor payment of rent. His difficulty, however, is that he has been unable to secure alternative accommodation and does not expect that he would be able to do so at any point in the immediate future.
10. The Respondent has spoken to Fife Council. He was advised by the Council that it has declared a housing emergency since March 2024. He has been taking steps to secure alternative accommodation in the private rented sector. He explained that he is aware that a flat very close to the property he is living in just now is now vacant and he has taken extensive steps to attempt to engage with the proprietor to rent that property. He has been unsuccessful in making contact. He is registered to receive alerts from Zoopla and Rightmove, two well known, online organisations which list properties for sale and rent. He recently made contact with a view to renting a property nearby. He was advised that there had been 100 applications and the property was let to someone else within 24 hours of it being on the market for

let. He would, ideally, wish to live in the locality in which he is currently residing in but accepts he may need to look further afield and, indeed, has been looking for properties up to 15 miles away from his accommodation. He was also looking at properties with rent significantly higher than the rent is currently paying.

11. The Respondent ultimately stated that, accepting, the reasons for the eviction order being sought, if he was to be permitted up to 90 days to secure alternative accommodation he would have no opposition to the application being granted.
12. The Tribunal thereafter allowed a short adjournment to enable Mr Gordon to obtain instructions from his clients in relation to possibility of an eviction order being granted with the date of enforcement deferred for a period of 90 days.
13. When the Tribunal resumed Mr Gordon confirmed that, having taken instructions, his clients were willing to consent to an eviction order being granted with the enforcement date being deferred for a period of 3 months. The Respondent again confirmed his consent to an order being granted in those terms. In the circumstances, having regard to the overall circumstances presented and, in particular, the agreement now reached between the parties, the Tribunal granted an order for eviction which, if necessary can be enforced on or after 9th August 2024.

FINDINGS IN FACT

14. The Tribunal found the following facts to be established: -
 - a) By lease dated 22nd February 2017, the Respondent let the Property from Tracey McConnell-Wood. The tenancy is a short assured tenancy in terms of the 1988 Act.
 - b) A notice to quit and a notice in terms of s33 of the 1988 Act were served upon the Respondent on 31st January 2023.
 - c) A notice in terms of s11 of the Homeless Etc. (Scotland) Act 2003 was intimated to the local authority.
 - d) Following the application being presented to the Tribunal, Tracey McConnel-Wood passed away. The application thereafter continued in the name in the executors of Tracey McConnell-Wood.
 - e) The executors of the estate of the late Ms Tracey McConnell-Wood wished an eviction order as they required to sell the Property to enable the executory estate to be wound up and disbursed in accordance with the will of the late Tracey McConnell-Wood.
 - f) The Respondent consents to an order for eviction provided he was allowed a period of 90 days to secure alterative accommodation. The executors of the estate of Tracey

McConnell-Wood consent to an eviction order being granted in those terms.

DECISION

The Tribunal granted an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988.

Order not to be executed prior to 12 noon on 9 August 2024

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.

Virgil Crawford

10 May 2024

Legal Member/Chair

Date