



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Rule 17(4) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 18 of the Housing (Scotland) Act 1988 (“the Act”) and Rule 65 of the Rules

Chamber Ref: FTS/HPC/EV/24/0828

Re: Property at 140 Burnbank Road, Ayr, KA7 3QJ (“the Property”)

Parties:

Bank of Scotland PLC, The Mound, Edinburgh, EH1 1YZ (“the Applicant”) per their agents, Aberdeen Considine, 18, Waterloo Street, Glasgow, G2 6DB (“the Applicant’s Agents”)

Ms Laura Hunter and Mr Paul MacLeod, 140 Burnbank Road, Ayr, KA7 3QJ (“the Respondents”), per their agents, Ayr Housing Aid Centre, 7, York Street, Ayr KA8 8AN (“the Respondents’ Agents”)

Tribunal Members:

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory ground being established and the statutory procedure having been carried out, it is reasonable to grant the Order sought and so the Tribunal granted the Order.

Background

1. By application received on 20 February 2024 (“the Application”), the Applicant applied to the Tribunal for an Order for eviction and possession of the Property based on Ground 2 of Schedule 5 to the Act, that the creditor is entitled to sell the house and requires it for the purpose of disposing of it with vacant possession in exercise of that entitlement.
2. The Application comprised the following:

- i) copy Notices in terms of the Conveyancing (Scotland) Act 1970 in respect of the statutory calling-up procedure;
 - ii) Extract decree dated 28 September 2023 and
 - iii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to South Ayrshire Council being the relevant local authority.
3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the “CMD”) was fixed for 8 July 2024 at 14.00 by telephone conference. The CMD was intimated to both Parties, and, in particular, was intimated to the Respondents by Sheriff Officer service on 5 June 2024.
 4. Prior to the CMD, the Respondent’s Agents submitted written representations to the Tribunal and the Applicant’s Agents opposing the Application in respect of reasonableness because of the specific serious health issues facing both Mr. McLeod of the Respondents and Respondents’ six year old daughter and asking that an evidential hearing be fixed. A photocopy of the short assured tenancy agreement between the Parties was also submitted.

CMD

5. The CMD took place on 8 July 2024 at 14.00 by telephone. The Applicant was represented by Mr. J. Di Paloa of the Applicant’s Agents. The Respondents were present and were represented by Mr. D. Anderson of the Respondents’ Agents.
6. Mr. Anderson and Mr. Di Paloa advised the Tribunal that the Parties had agreed that the Order should be granted but stayed for a period of six months for the Respondents to secure alternative accommodation, although the Respondents’ preference is for a nine months stay.
7. The Tribunal noted that Ground 2 of Schedule 5 to the Act states that *“The house is subject to a heritable security granted before the creation of the tenancy and (a) as a result of a default by the debtor the creditor is entitled to sell the house and requires it for the purpose of disposing of it with vacant possession in exercise of that entitlement; and (b) either notice was given in writing to the tenant not later than the date of commencement of the tenancy that possession might be recovered on this Ground or the First-tier Tribunal is satisfied that it is reasonable to dispense with the requirement of notice”* and that Section 18 of the Act states *“(1) The First-tier Tribunal shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act. (2) The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured*

tenancy. (4) If the First-tier Tribunal is satisfied that any of the grounds in Part I or II of Schedule 5 to this Act is established, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so."

8. The Tribunal adjourned briefly to discuss the options open to it. The CMD reconvened and the Tribunal asked the agents for the Parties to provide further information.
9. Mr. Anderson for the Respondents stated that the Miss Hunter of the Respondents worked in forensic police work in the local area and so the local authority may have difficulty in finding accommodation suitable for the Respondents' needs and in an area which is suitable for Miss Hunter's work. He advised that, although the Respondents and the Respondents' Agents have been in contact with the local authority it is not known when, accommodation might be available and private sector housing is proving difficult due to costs. Mr. Anderson advised the Tribunal that the Respondents' Agents would continue to assist and advise the Respondents until suitable accommodation was secured.
10. Mr. Di Paloa advised the Tribunal that the Applicant is lender and is not a landlord. He explained that the Applicant is a creditor with an entitlement to sell the Property at the best price possible, which, from experience is with vacant possession. Mr. Di Paloa stated that the Applicant is prepared to halt the eviction taking place to allow for re-housing until after the end of the year.
11. The Tribunal adjourned to consider if it had sufficient information to proceed at the CMD and took the view that it did.

Findings in Fact

12. From the Application and the CMD, the Tribunal made the following findings in fact: -
 - i) There is a tenancy of the Property between the Respondents and Callum Watt commencing in 2017;
 - ii) Callum Watt had secured lending on the Property from the Applicant;
 - iii) Callum Watt defaulted on repayments to the Applicant;
 - iv) The Applicant called-up the secured loan and obtained a Decree of possession and sale;
 - v) The Applicant is bound by the calling-up procedure to market the Property for sale and to achieve a sale at the best price;
 - vi) The Applicant requires vacant possession of the Property to do so;

- vii) The Applicant carried out the correct statutory procedures in respect of the Act;
- viii) The Applicant is not a registered landlord;
- ix) Mr. McLeod of the Respondents has serious medical conditions;
- x) The Respondents' six year old daughter has a complex medical condition;
- xi) The Respondents and their daughter require suitable accommodation to meet their specific medical needs;
- xii) The Respondents have begun the process of finding suitable accommodation but have been unable to do so to date;
- xiii) The Respondents are willing to remove from the Property when they have secured suitable accommodation

Decision and Reasons for Decision

13. The Tribunal had regard to all the information before it and to its Findings in Fact.

14. Having found that the eviction Ground has been met, the Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "*may do anything at a case management discussionincluding making a decision*". The Tribunal took the view that it had sufficient information to make a decision and so proceeded to determine the Application.

15. The statutory ground and procedure being established, and the Application not being opposed, the issue for the Tribunal was to determine if it is reasonable to grant the Order.

16. The Tribunal then had regard to the circumstances of the Parties.

17. The Tribunal must establish, consider and properly weigh the "whole of the circumstances in which the application is made" (Barclay v Hannah 1947 S.C. 245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.

18. The Tribunal then looked to balance the rights and interests of both parties.

19. The Tribunal accepted that the Applicant is a lender and has obtained a Decree of possession and sale. The Tribunal accepted that the Applicant is obliged to sell the Property at the best price to fulfil its obligations in terms of the statutory calling- up procedure and that it requires vacant possession to do so.

20. The Tribunal accepted that the Respondents and their daughter have specific housing needs. The Tribunal had regard to the fact that, as the Application is based on the Applicant's statutory duties and is not based on any fault on the part of the Respondents, the Respondents, if evicted and made homeless, would have protection in terms of Part II of the Housing (Scotland) Act 1987 and so would be able to access accommodation suitable for their needs.
21. The Tribunal took the view that as the Respondents did not oppose the Application, and, as they are being assisted by competent housing advisors, the Respondents have made an informed choice based on what is best for them and their daughter. The Tribunal took the view that refusing to grant the eviction order could place the Respondents under a prolonged stressful situation which would not be beneficial to them.
22. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order and determined to stay the order for a period of seven months to allow sufficient time for the local authority to comply with its statutory duties to the Respondents.

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.

K. Moore

Legal Member/Chair

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8 July 2024

Date