

Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 109 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/24/0597

13 South Deskford Street, Buckie, AB56 4XE ('the Property')

Parties:

Carol O'Brien residing at 33 Milnes Croft Court, Fochabers, IV32 7HQ ('the Applicant')

Christopher Clements, Katy Clements and Sue Clements residing together at 13 South Deskford Street, Buckie, AB56 4XE ('the Respondents')

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal')

Tribunal Members: Jacqui Taylor (Legal Member) Sandra Brydon (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined that the order for possession of the Property be granted.

1. Background

1.1. The Applicant submitted an application to the Tribunal for eviction/ possession of the Rented Property under section 51(1) of the Private Housing Tenancies (Scotland) Act 2016, in terms of Rule 109 of the Procedure Rules.

1.2 The application was dated 1st February 2024. The application states that the ground for eviction was as follows:

'Ground 4: This is my only Property and home and I need to move back into it.'

1.3 Documents lodged with the Tribunal were:-

- The Private Residential Tenancy Agreement between the parties dated 6th April 2023.
- Notice to Leave dated 26th October 2023 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 20th January 2024 and the eviction ground is that the Landlord wishes to move back into the Property.

- Letter signed by the Respondents confirming that they received the Notice to Leave on 26th October 2023.
- Letter signed by the Applicant headed 'Statement of Intent' stating that she intends to move back into the Property as soon as it is vacated.
- Section 11 Notice addressed to Moray Council.
- A copy of the disposition of the Property in favour of Michael Fraser and Carol Fraser and the survivor (date of entry 21st January 1999) Recorded GRS Banff.
- An email from MacPhee solicitors to the Applicant dated 7th March 2024 advising that the title to the Property is registered in the joint names of Carol and her late husband Michael and the survivor of them.
- Marriage Certificate of Thomas O'Brien and Carol Fraser.

2. By Notice of Acceptance by Helen Forbes, Convener of the Tribunal, dated 8th April 2024, she intimated that she had decided to refer the application (which application paperwork comprises documents received between 6th February 2024 and 13th March 2024) to a Tribunal.

3. The Respondents had not lodged any written representations.

4. Case Management Discussion

This case called for a conference call Case Management Discussion (CMD) at 14.00 on 7th August 2024.

The parties attended.

4.1 Oral Representations by the parties:

4.1.1 The Applicant explained that her husband has terminal cancer and she needs to move back into the Property as it has two bedrooms and this is more suitable to enable her to provide care for her husband. She presently lives with her husband in a one bedroom sheltered property. She is agreeable to allowing time for the Respondents to have the stair lift installed in their new property and is happy for the date of the eviction being a date in approximately six weeks time.

4.1.2 Mrs Sue Clements spoke on behalf of the Respondents. She explained that they consent to the eviction. They have been offered a property by Moray Council. They have still to view the property but hope to do so this week. Before they can move into the property a stair lift will have to be installed. The Occupational Therapist has advised that it will take approximately six weeks for the stair lift to be ordered and installed.

5. Requirements of Section 109 of the Procedure Rules.

(a) The Tribunal confirmed that the application correctly detailed the requirements of section 109(a) of the Procedure Rules namely:-

- (i) the name, address and registration number of the Landlord.
- (ii) the name and address of the Landlord's representative.
- (iii) the name and address of the Tenant.

(iv) the ground of eviction. The ground stated in the application is that the Applicant intends to move into the Property.

The Tribunal accepted that this is Ground 1 of Schedule 4F of the 2016 Act.

(b) The Tribunal confirmed that the application correctly detailed the requirements of Section 109(b) of the Procedure Rules:

(i) evidence showing that the eviction ground or grounds had been met.

The letter signed by the Applicant confirming that she intended to move into the Property as soon as it was vacated was sufficient in its terms.

(ii) a copy of the notice to leave given to the Tenant as required by section 52(3) of the 2016 Act.

The Tribunal confirmed that the Notice to Leave was in correct form as set out in Schedule 5 of the Private Residential Tenancies Notices and Forms (Scotland) Regulations 2017 ('The 2017 Regulations').

The Notice to Leave was dated 25th October 2023 and advised the Respondents that an application would not be submitted to the Tribunal for an eviction order before 20th January 2024.

The Respondents had resided in the Property for more than six months and the application for eviction was based on ground 4 of Schedule 3 of the 2016 Act and therefore eighty four days notice was required. The Notice to Leave was acknowledged by the Respondents on 26th October 2023. The Notice to Leave correctly gave the Respondents a minimum of eighty four days notice.

(iii) a copy of the notice given to the local authority as required by Section 56(1) of the 2016 Act.

The Tribunal confirmed that a copy of the required notice had been provided.

(c) The Tribunal confirmed that the application form had been correctly signed and dated by the Landlord as required by Section 109(c) of the Procedure Rules.

6. Decision

6.1 The Tribunal found that the Applicant had met the requirements of Ground 4 of Schedule 3 The Private Housing Tenancies (Scotland) Act 2016 for the following reasons:

6.1.1 The Tribunal had a copy of the recorded disposition in favour of the Applicant and her late husband which established that the Applicant is heritable proprietor of the Property.

6.1.2 Evidence had been provided that the Applicant intends to move into the Property for at least three months from the date it becomes vacant. The Tribunal accepted the following evidence:

6.1.2.2 The letter of intent provided by the Applicant.

6.1.2.3 The oral evidence of the Applicant that she needs to move into the Property to enable her to care for her terminally ill husband.

6.1.3 The Tribunal find as a matter of fact that the Applicant intends to move into the Property as her principal home for at least three months.

6.2 The Tribunal were mindful of the decision of Lord Greene in the case of Cummings v Dawson (1942) 2 All ER 653 on matters to consider when determining reasonableness:

'In considering reasonableness... it is my opinion, perfectly clear that the duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad, common sense way as a man of the world, and to come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or more weight, others may be decisive.'

The Tribunal found that it was reasonable for the eviction order to be granted given the fact that the Applicant needs to move into the Property as it has two bedrooms and is more suitable to enable her to care for her terminally ill husband and the fact the Respondent consents to the order. The Tribunal also consider that it is reasonable that the eviction order should not be executed for seven weeks to allow time for the Respondents to arrange for the stair lift to be fitted into their new property.

6.3 The Tribunal granted the eviction.

7. 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.

J. Taylor

Legal Member

7th August 2024