



**Decision with Statement of Reasons 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/24/0935

Re: Property at 13 Crowwood Drive, Airdrie, ML6 8JL ("the Property")

Parties:

**Mr Gordon Cowan, 281 Jess Road, Bullsbrook, Western Australia, 6084, Australia
("the Applicant")**

**Ms Michelle Griffen, 13 Crowwood Drive, Airdrie, North Lanarkshire, ML6 8JL
("the Respondent")**

Tribunal Members:

Gillian Buchanan (Legal Member) and Angus Lamont (Ordinary Member)

Decision

At the Case Management Discussion ("CMD"), which took place by telephone conference on 4 July 2024, the Applicant was in attendance and was supported by his partner, Ms Paula Sanchez-Staud. The Respondent was also present and was supported by her mother, Ms Liz Lennon.

Prior to the CMD the Tribunal had received the following additional representations from the parties:-

From the Applicant:-

- i. Emails dated 20 June 2024;
- ii. Email dated 27 June 2024 with attachments; and
- iii. Email dated 1 July 2024.

From the Respondent:-

Email dated 25 June 2024 with attachments.

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

The Tribunal noted the following *background*:-

- i. The Applicant leased the Property to the Respondent in terms of a Short Assured Tenancy Agreement ("the SAT") signed on 4 August 2017.
- ii. The initial term of the SAT was stated to be from 6 June 2017 to 6 December 2017 and thereafter the SAT has continued on a monthly basis from the 7th day of one month to the 6th day of the following month.
- iii. On 3 November 2023 the Applicant per his agents, Your Move, served on the Respondent a Notice to Quit and a Form AT6 Notice under Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act") both dated 2 November 2023 requiring the Respondent remove from the Property by 6 February 2024.
- iv. The Form AT6 Notice stated that possession of the Property was sought on the basis of Ground 1 of Schedule 5 of the 1988 Act.
- v. The application is dated 25 February 2024.
- vi. The application proceeds on the basis of Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules").

The CMD

Applicant's Submissions

At the outset of the CMD the Tribunal raised the following matters with the Applicant:-

Eviction Ground per Application

The Tribunal observed that, notwithstanding that the Form AT6 Notice was served on the Respondent only on the basis of Ground 1 of Schedule 5 of the 1988 Act, the application sought an eviction order on the basis of the Grounds 1, 1A, 11 and 14 of Schedule 5 of the 1988 Act.

The Applicant stated that the Notices had been served by his letting agent, Your Move, and they had only relied upon Ground 1.

The Tribunal referred to Section 19(2) of the 1988 Act and asked the Applicant whether, in terms thereof, he was seeking leave of the Tribunal to add to the Ground stated in the Form AT6 Notice, namely Ground 1, additional Grounds being Grounds 1A, 11 and 14. The Applicant confirmed that he sought to leave of the Tribunal to include Grounds 1A, 11 and 14. He said that he had put his trust in his letting agent to serve the appropriate Notices and it was only when he looked further into the position that he identified other Grounds that had not been included.

Ground 1A

The Tribunal indicated to the Applicant that Ground 1A had been repealed with effect from 31st March 2024. Notwithstanding that, the Applicant still sought to include Ground 1A.

Ground 11

With regard to Ground 11 the Applicant stated that due to Covid rent had not been paid by the Respondent for a number of months and arrears in excess of £2000 accrued. He had no alternative but to continue paying the mortgage and carry out repairs to the Property etc. The Respondent started to pay back the arrears and the last payment towards the arrears was made in January 2023. He said he would get messages from his letting agent that the rent had not been paid and that the Respondent was not answering phone calls or emails. He said his heart was in his mouth waiting to see

whether the rent would be paid. The Applicant confirmed the Respondent's rent is presently up-to-date.

Ground 14

With regard to Ground 14 the Tribunal referred to the general statement in the application that the Respondent had "caused lots of damage" to the Property which, he stated, would cost around £15,000 to put right. The Tribunal asked what damage had been caused. The Applicant referred to there being dogs in the Property in breach of the SAT. He said the dogs had been "chewing and damaging everything". The Tribunal referred to the photographs that the Applicant had lodged with his email of 27th June 2024 and could see no evidence of damage therein. The Applicant accepted he had produced no evidence of damage with the papers but that could send photographs through.

The Applicant said that unless an eviction order was granted the Property would be repossessed and the Respondent would have to move out anyway. He asked the Tribunal if it wanted him to have a nervous breakdown.

Ground 1 Notice

The Tribunal asked the Applicant whether any Notice in writing had been given to the Respondent not later than the beginning of the SAT intimating to the Respondent that possession of the Property might be recovered under Ground 1 all as narrated in Ground 1 of Schedule 5 of the 1988 Act. Whilst the Applicant referred to the service of the Form AT5 at the outset of the SAT, no other Notice appear to have been served.

Section 11 Notice

The Tribunal advised the Applicant that no Section 11 Notice under the Homelessness etc (Scotland) Act 2003 or evidence of intimation thereof had been produced with the application. The Applicant said such a Notice had been dealt with by Your Move.

Sale of the Property

The Tribunal asked why the Applicant required to sell the Property. He said mortgage interest rates had gone up and he was drowning in debt. He said his mental health was suffering. He has three other properties in Scotland and he cannot pay the mortgages on them. He said the rent being paid by the tenants does not cover the four mortgages. He emigrated to Australia in 2012 and couldn't sell the properties at that time as there was negative equity in all of them.

With regard to the Property the Applicant receives rent of £550 per month after the letting agent takes its "cut" from the rent paid (£625 per month). However, the mortgage is £691 per month. He also has to pay landlord insurance.

He referred to one of his other properties being on the market for sale. The mortgage on that property is £358 per month and he has no rental income therefrom.

He is subsidising the Respondent in the Property.

The Tribunal asked whether the Applicant had any intention of returning to the UK. The Applicant said he could not afford to come back.

Respondent's Submissions

The Respondent stated that she was not contesting an eviction order being granted. She needs the eviction notice to secure accommodation from the local authority. She has no other option and cannot the move to any other privately let property.

The Respondent answered the application per her email of 25 June 2024 as she did not agree with that points made by the Applicant. She said he had added other Grounds to the application to make the situation look better for him. She said she understood the Applicant's financial position and had not appreciated the deficit between the rent and the costs payable. She said she was not arguing against his position. She said that there were a number of points made by the applicant that she could argue but that she did not need to get personal with him. She said that she had never denied keeping dogs at the Property what but was given permission to do so by the original letting agent, albeit not in writing.

She said that she took exception to the Applicant lodging photographs that included images of her children taken from her social media.

The Respondent stated that she is on the general housing list with the local authority. She would not go onto the homeless list until an eviction order had been granted. The local authority is aware of the CMD. The local authority could give no guarantee of when the suitable housing might become available.

Findings in Fact

The Tribunal made the following findings in fact:-

- i. The Applicant leased the Property to the Respondent in terms of the SAT.
- ii. The initial term of the SAT was stated to be from 6 June 2017 to 6 December 2017 and thereafter the SAT has continued on a monthly basis from the 7th day of one month to the 6th day of the following month.
- iii. On 3 November 2023 the Applicant per his agents, Your Move, served on the Respondent a Notice to Quit and a Form AT6 Notice under Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act") both dated 2 November 2023 requiring the Respondent remove from the Property by 6 February 2024.
- iv. The Form AT6 Notice stated that possession of the Property was sought on the basis of Ground 1 of Schedule 5 of the 1988 Act.
- v. The Property had previously been the Applicant's principal home prior to the SAT.
- vi. The Applicant emigrated to Australia in 2012 and has no plans to return to the UK.
- vii. The rent paid by the Respondent to the Applicant in terms of the SAT is £625 per month.
- viii. After paying his letting agent's fees, the Applicant receives the balance of the rent being £550 per month.
- ix. The monthly mortgage payable by the Applicant is £691.
- x. The Applicant also requires to pay landlord insurance on the Property and pay for remedial costs from time to time.
- xi. In addition to the Property, the Applicant owns 3 other properties in Scotland. He is paying a mortgage in respect of each property. One of those properties is on

- the market for sale. The total rental income from the properties does not cover the total mortgage payments due.
- xii. Once he has recovered possession of the Property the Applicant will put the Property on the market for sale.

Reasons for Decision

Eviction Grounds

The eviction grounds in the application are stated to be as follows:-

"Ground 1A – Due to financial hardship and high interest rates I need the property back.

Ground 1 – House was mine. Principal house prior to tenancy being granted. Property is required for myself and my spouse.

Ground 11 – Tenant has persistently paid rent late. Delayed payments.

Ground 14 – Tenant has caused lots of damage to my property which will cost around £15,000 to put right."

The Applicant accepted that only Ground 1 of Schedule 5 of the 1988 Act was referenced in the Form AT6 Notice.

Section 19(2) of the 1988 Act states:-

"(2) The First-tier Tribunal shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground and particulars of it are specified in the notice under this section; but the grounds specified in such a notice may be altered or added to with the leave of the Tribunal."

The Applicant sought leave of the Tribunal to add to the Form AT6 Notice Grounds 1A, 11 and 14 of the 1988 Act.

Whilst the Tribunal had reservations about the competency of adding Ground 1A due to that Ground having been repealed with effect from 31 March 2024, the Tribunal was not persuaded that any additional Grounds should be added to the Form AT6 Notice in any event.

There was no adequate explanation as to why these additional Grounds had not been referenced in the Form AT6 Notice if the Applicant wished to found upon them. Whilst the Applicant blamed his letting agent for the omission, the Tribunal was not persuaded that the Applicant should be allowed to introduce into the application eviction Grounds that had not been intimated in the Form AT6 Notice. It may be that Ground 11 had been omitted by the letting agent as the rent was up to date in November 2023 when the Notices were served and that remained the position at the CMD. Further there was no evidence that the Respondent had caused any damage to the Property let alone damage that would cost £15,000 to put right. Absolutely no specification had been provided of any damage and none was provided or vouched at the CMD.

The Tribunal therefore refused leave in terms of Section 19(2) of the 1988 Act and proceeded to consider the application on Ground 1 alone.

Ground 1 Notice

Ground 1 of Schedule 5 of the 1988 Act states:-

"Not later than the beginning of the tenancy the landlord (or, where there are joint

landlords, any of them) gave notice in writing to the tenant that possession might be recovered on this Ground or the First-tier Tribunal is of the opinion that it is reasonable to dispense with the requirement of notice and (in either case)—

(a) at any time before the beginning of the tenancy, the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them occupied the house as his only or principal home; or

(b) the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them requires the house as his or his spouse's or civil partner's only or principal home, and neither the landlord (or, in the case of joint landlords, any one of them) nor any other person who, as landlord, derived title from the landlord who gave the notice mentioned above acquired the landlord's interest in the tenancy for value."

The Applicant ultimately accepted that no written notice had been served on the Respondent not later than the beginning of the SAT intimating that possession of the Property might be recovered under this Ground. He asked the Tribunal to dispense with the requirement of such a notice. The Respondent offered no opposition to dispensation and, in the circumstances, the Tribunal considered it reasonable to dispense with such a notice.

Eviction order under Ground 1 and reasonableness

The Applicant, in the application, stated that the Property had previously been his principal home prior to the SAT. This was not contested by the Respondent and was accepted by the Tribunal.

Section 18(1) to (4) of the 1988 Act states:-

"18.— Orders for possession.

(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."

The Tribunal considered whether it would be reasonable to grant an eviction order. The Tribunal had particular regard to the Respondent not contesting an eviction order being granted, to her ongoing dialogue with the local authority regarding alternative accommodation and to her appreciation of and the absence of any challenge to the financial difficulties being experienced by the Applicant.

The Tribunal noted that after paying fees to his letting agent the balance of the monthly rent received by him was not sufficient to pay the mortgage on the Property and, in addition, he had additional outlays to meet by way of insurance and remedial costs from time to time. The Applicant is subsidising the Respondent's occupation of the Property. He needs to sell the Property.

The Tribunal determined it would be reasonable to grant an eviction order in the circumstances but could only do so once it had sight of a Section 11 Notice under the Homelessness etc (Scotland) Act 2003 and evidence of that Notice having been intimated on the local authority which the Applicant stated Your Move had previously done.

Section 19A of the 1988 Act states:-

"19A Requirement to notify local authority of proceedings for possession

(1) Where a landlord raises proceedings for possession of a house let on an assured tenancy, the landlord shall give notice of the raising of the proceedings to the local authority in whose area the house is situated, unless the landlord is that local authority.

(2) Notice under subsection (1) above shall be given in the form and manner prescribed under section 11(3) of the Homelessness etc. (Scotland) Act 2003 (asp 10)."

The Tribunal therefore advised the parties that the grant of an eviction order was conditional upon the Applicant producing to it the Section 11 Notice and evidence of intimation thereof. The Tribunal adjourned to allow the Applicant to produce the Section 11 Notice and evidence of intimation thereof.

Section 11 Notice

Following the adjournment of the CMD the Tribunal received the following from the parties:-

- i. Emails from the Applicant dated 4, 5, 9, 12, 13 and 16 July 2024 with attachments.
- ii. Email from the Respondent dated 16 July 2024.

The Tribunal noted that new Section 11 Notices had been served by both the Applicant and his letting agent subsequent to the CMD. The Tribunal was not persuaded these would necessarily comply with the requirements under Section 19A above. Further, the content and tone of a number of the Applicant's communications with the Tribunal office were inappropriate.

The Tribunal noted the Section 11 Notice prepared by Your Move in November 2023. The only evidence of intimation of that Section 11 Notice by Your Move was an email written by "Michael" dated 15 July 2024 and produced by the Applicant with his email of 16 July 2024 in which "Michael" states:-

"The original email would of been sent in November but our servers won't go back that far. We have a note on our system to say it was sent but would not be able to provide the actual email."

The Tribunal was surprised that the letting agent could not produce an email sent only in November 2023. However, in the absence of any challenge by the Respondent to the position, the Tribunal determined that, on the balance of probabilities, the Section 11 Notice was sent by Your Move to the local authority in November 2023 having regard to "Michael's" email of 15 July 2024.

Decision

The Tribunal grants an eviction order in favour of the Applicant against the Respondent.

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.

Gillian Buchanan

Legal Member/Chair

22 July 2024
Date