



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 (“the 1988 Act”)

Chamber Ref: FTS/HPC/EV/24/0723

Re: Property at 65 Robertson Street, Airdrie, ML6 0EW (“the Property”)

Parties:

Mr John McAuley, 18 Cairnview Road, Milton of Campsie, Glasgow, G66 8BL (“the Applicant”)

Ms Sarah Simpson, 65 Robertson Street, Airdrie, ML6 0EW (“the Respondent”)

Tribunal Members:

Sarah O’Neill (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession should be granted in favour of the Applicant.

Background

1. An application was received from the Applicant on 13 February 2024 under rule 65 of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”) seeking recovery of possession of the property under Ground 1 as set out in Part 1 of Schedule 5 of the 1988 Act.
2. Attached to the application form in respect of the application were:
 - (i) Copy assured tenancy agreement between the parties, which commenced on 1 November 2011 and was signed by both parties
 - (ii) Copy notice to quit dated 24 July 2023 and copy form AT6 dated 26 July 2023, together with certificate of service by sheriff officer dated 26 July 2023 relating to both documents

- (iii) Copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 to North Lanarkshire Council, with proof of sending by email on 14 February 2024
 - (iv) Affidavit by the Applicant dated 8 February 2024
3. The application was accepted on 9 May 2024.
 4. Notice of the case management discussion (CMD) scheduled for 12 September 2024, together with the application papers and guidance notes, was served on the Respondent by sheriff officer on behalf of the tribunal on 13 August 2024. The Respondent was invited to submit written representations by 2 September 2024.
 5. No written representations were received from the Respondent prior to the CMD.

The case management discussion

6. A CMD was held by teleconference call on 12 September 2024. The Applicant was represented by Miss Donnelly of TC Young Solicitors. The Respondent was present on the teleconference call and represented herself.

Submissions on behalf of the Applicant

7. Miss Donnelly asked the tribunal to grant an order in favour of the Applicant against the Respondent for recovery of possession of the property under Ground 1 as set out in Part 1 of Schedule 5 of the 1988 Act i.e. that the Applicant wants to live in the property himself.
8. The Applicant's situation remained as set out in the application and in his affidavit. He and his wife had decided to separate, and were currently living in their two bedroom home with their two teenage daughters, one of whom is autistic. They did not wish to make their daughters aware of the separation until he was able to move out. The situation was causing considerable stress and anxiety to the Applicant and his wife. His employment situation is insecure and he cannot afford to rent or purchase another property. He therefore wished to move into the property, which had previously been his only or principal home, as soon as possible. It was his intention that his daughters would live with him part of the time at the property once he had moved in.

Submissions by the Respondent

9. The Respondent told the tribunal that she did not wish to oppose the application. She accepted that she would need to leave the property, but had remained there while she awaited the outcome of today's CMD. She had been advised by North Lanarkshire Council that she should remain in the property until she received an eviction order. She said that her teenage daughter had been experiencing serious mental health issues and she wished to find a more permanent home where they could get settled.

Findings in fact

10. The tribunal made the following findings in fact:

- There was an assured tenancy in place between the Applicant and the Respondent. The tenancy commenced on 1 November 2011 for an initial period of six months.
- Clause 26 of the tenancy agreement gave notice to the Respondent that possession of the property may be recovered under Ground 1 of Part 1 of schedule 5 of the 1988 Act and stated that the tenant acknowledged this notice by her acceptance of the tenancy agreement.
- The AT6 contained the prescribed information and was dated 26 July 2023. It had been served on the Respondent by sheriff officer on 26 July 2023.
- The notice to quit was in the prescribed form and was dated 24 July 2023. It had been served on the Respondent by sheriff officer on 26 July 2023.
- The Applicant had previously lived in the property as his only or principal home between 2002 and 2011.

Reasons for decision

11. The tribunal considered whether the requirements for Ground 1 had been established. Ground 1, as set out in schedule 5 of the 1988 Act, states:

Ground 1

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.

12. The tribunal noted that: 1) the Applicant had previously lived in the property as his only or principal home and 2) the Applicant had given the Respondent notice in writing that possession of the property may be recovered under Ground 1 of Part 1 of Schedule 5 of the 1988 Act, in terms of clause 26 of the tenancy agreement. The tribunal was therefore satisfied that Ground 1 was established.
13. The tribunal then considered whether it was reasonable to make an order for recovery of possession, in terms of section 18(4) of the 1988 Act. In doing so, it took into account all of the circumstances of the case.
14. The tribunal had regard to the difficulties being experienced by the Applicant and his family and the reasons why he sought to regain possession of the property. The tribunal noted that the current situation was also causing difficulties for the Respondent and her family. The Respondent was expecting an eviction order to be granted, and saw this as necessary to allow her to move forward with securing a more permanent home for herself and her family via North Lanarkshire Council.
15. In light of the above considerations, the tribunal decided that it was reasonable to grant an eviction order in all of the circumstances.

Decision

The tribunal therefore grants an order in favour of the Applicant against the Respondent for recovery of possession of the property.

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.

S. O'Neill

Legal Member/Chair _____ **12 September 2024** _____
Date