

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/24/2208

Re: Property at 58 Cameron Way, Prestonpans, EH32 9FH (“the Property”)

Parties:

Mr Murray Fleming, Miss Gail Nisbett, 75 Laburnum Avenue Port Seton, Prestonpans, EH32 0UD; 75 Laburnum Avenue, Port Seton, EH32 0UD (“the Applicant”)

Miss Gemma Brodie, Mr Paul Simpson, 58 Cameron Way, Prestonpans, EH32 9FH (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member) and Ann Moore (Ordinary Member)

Decision

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

BACKGROUND

1. By lease dated 30 August 2014 the Applicants let the Property to the Respondents.
2. Prior to the lease being signed a notice in terms of s32 of the Housing (Scotland) Act 1988 (“the 1988 Act”) was served on the Respondents. The lease is, accordingly, a short assured tenancy.
3. A Notice to Quit and a Notice in terms of s33 of the 1988 Act were served upon the Respondents on 7th February 2024.
4. A Notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority.

5. The Applicants thereafter presented an application to the Tribunal seeking an order for eviction.

THE CASE MANAGEMENT DISCUSSION

6. The Applicants were represented at the Case Management Discussion by the first named Applicant, Mr Murray Fleming. The first named Respondent participated in the Case Management Discussion. The Second Named Respondent did not. Information provided to the Tribunal was to the effect that he vacated the Property some time ago and is, accordingly, no longer in occupation. In any event, the Tribunal was in receipt of a certificate of intimation by Sheriff Officers confirming that the proceedings had been intimated upon the Respondent. In the circumstances, the Tribunal was satisfied in terms of Rule 24 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the FTT Regs”) that the respondent had received intimation of the date and time of the Case Management Discussion and considered that it was appropriate to proceed with the Case Management Discussion in the absence of the Respondent in accordance with Rule 29 of the FTT regs

The Applicants

7. Mr Fleming confirmed the Applicants were seeking an order for eviction. The application to the Tribunal provided no information as to why the Applicants were seeking recovery of possession. Considering the Tribunal requires to determine the issue of reasonableness the Tribunal enquired of the reason for the application being presented.
8. Mr Fleming advised that he and Miss Nisbett were intending to sell the Property. Miss Brodie has been a tenant for 10 years. He confirmed she has been a good tenant and there are no difficulties with the tenancy itself. From a financial point of view, however, the mortgage, factors fees and other outgoings in relation to the Property significantly exceeded the monthly rental income. From a financial point of view, therefor, it is no longer viable to maintain this as a rental property.
9. In addition, Mr Fleming advised he has just turned 60 years of age. Given his stage of life, the Applicants are wishing to realise the capital in this property rather than continue it as a rental property.
10. The Applicants have 3 properties in total which are rented out. This property is the last one purchased by them and, having regard to that, and the fact that the outgoings exceed the rental income, they have decided to sell this property prior to the other two properties rented by them.

The Respondents

11. The first Respondent advised the Tribunal she did not oppose the eviction application. She advised she accepted that the landlords wish the Property back to enable them to sell it.
12. The Respondent resides at the property with her 3 children aged 16 years, 10 years and 8 years. She confirmed Mr Simpson, the second named Respondent, no longer resides at the Property. She provided an alternative address for him.
13. Her children attend a local high school and primary school. There were no medical nor other issues she wished to present to the Tribunal in relation to any issue of reasonableness of an eviction order. As stated, she consented to the eviction order being granted.
14. It was explained to the Tribunal that the first Respondent has attempted to secure alternative private rented accommodation but has been unable to do so. The current rental values are prohibitive. She has also, however, engaged with the local authority with a view to be allocated social housing. The local authority advised, however, that she requires an eviction order before they can take steps to assist her as, without an eviction order, she is not considered to be homeless.
15. The Tribunal explained that, if an eviction order was granted, there would be a period of time before it could be enforced. Miss Brodie was not aware of that. The Tribunal advised also that, if an eviction order was to be granted, the date of enforcement could be deferred. Miss Brodie was not aware of that. She did not, however, invite the Tribunal to defer the date of enforcement if an eviction order was to be granted.

FINDINGS IN FACT

16. The Tribunal found the following facts to be established:-
 - a) By lease dated 30 August 2014 the Applicants let the Property to the Respondents.
 - b) Prior to the lease being signed a notice in terms of s32 of the 1988 Act was served on the Respondents. The lease is, accordingly, a short assured tenancy.
 - c) A Notice to Quit and a Notice in terms of s33 of the 1988 Act were served upon the Respondents on 7th February 2024.
 - d) A Notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority.
 - e) The first Respondent consents to an eviction order being granted.
 - f) The second Respondent no longer occupies the Property

REASONS FOR DECISION

17. The application for an eviction order was not opposed by the first Respondent. The second Respondent did not participate in the proceedings. The Second Respondent has already vacated the Property and an up to date address was provided for him.
18. The first Respondent is actively seeking local authority accommodation. She requires an eviction order to enable the local authority to process her application for housing.
19. The Applicants explained why an eviction order is sought. The lease continuing is not financially viable having regard to the outgoings in relation to the Property and the rental income. No dispute was taken by the first Respondent with that information.
20. In the circumstances, the Tribunal considered that it was reasonable for an eviction order to be granted.
21. The Tribunal considered there to be no necessity for the date of enforcement to be deferred beyond the standard period permitted before enforcement steps can be taken.

DECISION

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

Order not to be executed prior to 12 noon on 28 October 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

Legal Member/Chair

20 September 2024
Date