



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/24/2753

Re: Property at 7 Kevoc Cottages, St Quivox, Ayr, KA6 5HJ (“the Property”)

Parties:

Mrs Nancy Foley, Mr Frank Foley, C9 East Beach Caravan Park, Lossiemouth, IV31 6NW (“the Applicants”)

Ms Maxine McClure, Mr Graham Dick (SBA), 7 Kevoc Cottages, St Quivox, Ayr, KA6 5HJ; UNKNOWN, UNKNOWN (“the Respondents”)

Tribunal Members:

Richard Mill (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted against the respondents

Introduction

1. This application is under rule 65 and section 18 of the Housing (Scotland) Act 1988. The application seeks an eviction order.
2. Intimation of the application and of the Case Management Discussion (‘CMD’) was effected upon the first respondent by Sheriff officers on 23 October 2024. There current whereabouts of the second respondent are unknown and lawful service has taken place upon him by advertisement on the Chamber website for the required period.
3. The applicants were represented by Mr Tony McTige of Messrs Jackson Boyd Solicitors. The first respondent was represented by Mr David Anderson of Ayr Housing Aid. The second respondent did not attend the hearing.

Findings and Reasons

4. The property is 7 Kevoc Cottages, St Quivox, Ayr KA6 5HJ. The applicants are Mrs Nancy Foley and Mr Frank Foley. They are the heritable proprietors and registered landlords of the property. The respondents are Ms Maxine McClure Mr Graham Dick who are the named tenants on the lease.
5. The parties entered into a short assured tenancy which first commenced on 1 March 2013. An AT5 Notice under section 32 of the 1988 Act was served on the respondents prior to the creation of the tenancy. It is accepted however that a short assured tenancy was not created as a consequence of the failure of the written short assured tenancy agreement to nominate an initial term for the lease. As a consequence, despite the parties entering into a written agreement which claimed to be a short assured tenancy, it was in fact an assured tenancy which was created by the parties.
6. On 19 January 2024 the applicants by Sheriff Officers served upon the respondents a notice to quit and in terms of the said notice to quit the applicants gave notice to the respondents that they would require to remove from the property on 1 March 2024. Further, by Sheriff Officers delivery on 13 March 2024, the applicants served upon the respondents notice by way of AT6 together with a further notice to quit. It was stipulated within the AT6 that proceedings would not be raised prior to 15 May 2023 when, in fact, it should have stipulated 15 May 2024. The applicants' representative relies upon the English case of Pease -v- Carter [2020] EWCA Civ 175. This case related to the insertion of the wrong year in a relevant notice to quit and the effect of this on subsequent proceedings. It was held that any person receiving such a notice would know what the relevant timescales and effect was. The tribunal is satisfied that the error in the relevant notice is not fatal in this application. Sufficient notice was given to the Respondents.
7. Following service of the notice to quit in January 2024, preventing the operation of tacit relocation, the contractual tenancy was brought to an end creating a statutory assured tenancy in terms of Section 16 of the Housing (Scotland) Act 1988 with effect from 1 March 2024.
8. The application for eviction is based upon Ground 1 contained within schedule 5 of the 1988 Act. This applies where a landlord occupied the let property as their home and / or the landlord requires the let property as their home. The tribunal is satisfied that this ground is established. This is not challenged.
9. The second applicant previously lived in the let property with his family and he and his wife purchased the property together from the family member. The applicants moved abroad around 15 years ago but always intended to return to Scotland and maintained the property for that reason. The second applicant developed health problems and the applicants have now returned back to the property to be closer to their family in Ayrshire. They are currently living in temporary caravan accommodation.

10. The second named respondent, Mr Dick, has not lived in the property for several years. He has no ongoing interest in the property and does not require the accommodation there.
11. The first respondent's representative confirmed that she has secured alternative accommodation from the local authority with effect from 8 November 2024. She will provide vacant possession on 30 November 2024. She accordingly no longer requires the let property. She offers no opposition to the eviction application.
12. Weighing up the parties respective circumstances and taking account of all relevant matters the tribunal concluded that it was reasonable to grant the eviction order. The date specified for implementation of the order, if required, was agreed between parties to be 3 January 2025.

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.

R Mill

26 November 2024

Legal Member/Chair

Date