

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) under Section 18 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/18/3032

Re: Property at 150 Craigton Road, Glasgow, G51 3RH (“the Property”)

Parties:

Mrs Robeena Akhter, 1/1, 4 Barnwell Terrace, Glasgow, G51 4TP (“the Applicant”)

Miss Zoe Reilly, Mr David McPherson, 150 Craigton Road, Glasgow, G51 3RH (“the Respondents”)

Tribunal Members:

Lynsey MacDonald (Legal Member)

Decision (in absence of the Respondents)

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

1. Background

- 1.1. The Applicant sought an order for eviction on the grounds that she wished to live in the property herself. An application in terms of Rule 65 (Assured Tenancies) was received by the Tribunal on 15th January 2019.
- 1.2. The Applicant lodged an AT6 form and Notices to Quit, both dated 28th July 2018. The Applicant advised that she was unable to provide a copy of the lease, as she did not have a copy.
- 1.3. The Tribunal fixed a Case Management Discussion for 11th March 2019 at 1130 hours, and this was intimated to parties. The Respondents were served with the letters informing of the date fixed for the Case Management Discussion, together with the aforementioned documents, by Sheriff Officer. The Respondents were advised that

written representations in response to the application were to be lodged by 5th March 2019. No responses have been received. The Respondents were also told that they were required to attend the Case Management Discussion today, and were informed that the Tribunal could today make any decision on the application that could be made at the full Hearing, if the Tribunal had sufficient information and considered that the procedure had been fair

2. The Case Management Discussion

- 2.1. The Applicant attended the Case Management Discussion, and represented herself. She was accompanied by her husband Mr Imran Khan.
- 2.2. By 1130 hours the Respondents had failed to attend at the venue. The Tribunal delayed in calling the Case Management Discussion, in order to allow extra time for the Respondents to attend in the event that they were running late. The Respondents failed to attend the Case Management Discussion.
- 2.3. The Applicant invited the Tribunal to proceed in the absence of the Respondents, and to grant the order. The Clerk had earlier confirmed that the Respondents had not been in contact with the Tribunal. The Applicant advised that the Respondents had not made any meaningful contact with her following service of the Notices to Leave. The Tribunal was satisfied that the Respondents were aware of the Case Management Discussion, and that it was fair to proceed in their absence.
- 2.4. The Tribunal proceeded on the basis of the written documents which had previously been lodged, together with evidence from the Applicant and her husband.

3. Findings in Fact

- 3.1. The Applicant purchased the property at auction on 25th July 2018.
- 3.2. Shortly after purchasing the property the Applicant and her husband attended at the property to view it. The Applicant and her husband spoke with the Respondents and indicated that they had purchased the property with the intention of living in it.
- 3.3. The Respondents had been living in the property for some time before July 2018 and had been paying rent at £425 per calendar month. The tenants indicated that they would make arrangements to pay the rent to the Applicant.
- 3.4. There was a written lease, and the Respondents refused to provide a copy of it to the Applicant.

- 3.5. The Respondents did not make any rent payments to the Applicant.
- 3.6. The Applicant intends to live in the property with her husband and children. The property will be her only home.
- 3.7. On 28th July 2018 the Applicant served, by hand, an AT6 form and a Notice to Quit on the Respondents, indicating that possession of the property was required on 1st November 2018.
- 3.8. The Respondents did not vacate the property.
- 3.9. The Application was submitted after the expiry of the notice period.

4. Reasons for Decision

- 4.1. The Tribunal had regard to the overriding objective to deal with proceedings fairly, timeously and in a manner proportionate to their complexity.
- 4.2. There was nothing before the Tribunal challenging or disputing any of the evidence before it. The Tribunal found that the Applicant and her husband were credible, and that their evidence could be relied upon.
- 4.3. Section 18(3) of the Housing (Scotland) Act 1988 ("the 1988 Act") provides that, *"If the First-tier Tribunal is satisfied that any of the grounds in Part I of Schedule 5 to this Act is established then, subject to subsections 3A and (6) below, the Tribunal shall make an order for possession"*.
- 4.4. Schedule 5, paragraph (1) of the 1988 Act provides that:
Not later than the beginning of the tenancy the landlord (or, where there are joint landlords) 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 one of them) nor any other person who, as landlord, derived title from*

from the landlord who gave the notice mentioned above acquired the landlord's interest in the tenancy for value.

- 4.5. The Tribunal accepts that the Applicant is the owner of the property, and that she intends to live in the property as her only home on a permanent basis.
- 4.6. The Tribunal was invited to waive the requirement for notice on the grounds that it was reasonable to do so. In support of the suggestion that it was reasonable, the Applicant relied upon:
- (a) The Applicant could not have given the Respondents notice because the tenancy was in existence already;
 - (b) The Applicant's early contact with the Respondents after the purchase of the property to advise them that she wished to live in the property;
 - (c) The Respondents' failure to communicate with the Applicant after the first meeting;
 - (d) The Respondents' refusal to provide a copy of the lease;
 - (e) The Respondents' failure to leave the property after the Applicant had complied with the requirements, namely she had served an AT6 and a notice to quit;
 - (f) The Applicant needed to live in the property because of her medical condition;
- 4.7. The Tribunal considered that it was reasonable to waive the requirement for notice.
- 4.8. Having waived the requirement for notice, the Tribunal was satisfied that grounds were met and that the Tribunal was required to grant the order.

5. Decision

The order for eviction is granted.

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.

Ms Lynsey MacDonald

Legal Member

11/03/19.

Date