



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/19/3817

Re: Property at 9A Bellfield Court, Campie Road, Musselburgh, EH21 6QZ (“the Property”)

Parties:

Mrs Elizabeth Gourlay, 23/4 Northfield Drive, Edinburgh, EH8 7RJ (“the Applicant”)

Miss Lyndsay Grant, Mr Christopher Clark, 9A Bellfield Court, Campie Road, Musselburgh, EH21 6QZ; 9A Bellfield Court, Campie Road, Musselburgh, EH21 6QZ (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and made an Order for Possession of the Property.

Background

By application, received by the Tribunal on 27 November 2019, the Applicant sought an Order for Possession of the Property under Section 18 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Ground relied on was Ground I of Part I of Schedule 5 to the 1988 Act, namely that, at some time before the beginning of the tenancy, the Applicant had occupied the Property as her only or principal home.

The application was accompanied by copies of a Short Assured Tenancy Agreement between the Parties commencing on 2 December 2015 and, if not terminated on 3 May 2016, continuing thereafter on a monthly basis until terminated by either Party giving no less than two months’ notice to the other Party, Notice given under Section 19 of the 1988 Act and a Notice to Quit, both Notices dated 25 July 2019 and both requiring the Respondent to vacate the Property by 2 October 2019, with evidence of service of both Notices by sheriff officer on 30 July 2019. The Section 19 Notice

(Form AT6) advised the Respondent that the Applicant intended applying to the Tribunal for an Order for Possession under Ground 1 of Schedule 5 to the 1988 Act. The Applicant also provided the Tribunal with a copy of a Notice given under Section 33 of the 1988 Act and evidence of its service by sheriff officer along with the Notice to Quit and the Section 19 Notice, but the Section 33 Notice was not relevant to the application, which was restricted to Ground 1 of Schedule 5.

The Section 19 Notice stated that the Applicant needed to move back into the Property as her permanent residential home. In Clause 20.4 of the tenancy agreement, the Respondent acknowledged that due notice had been given informing the Respondent that the Applicant could recover possession under Ground 1 of Part I of Schedule 5 to the 1988 Act.

The Applicant also submitted a Council Tax Notice for the Property, addressed to her at the Property, for the year 2013/2014, in support of her statement that, at some time before the beginning of the tenancy, she had occupied the Property as her only or principal home.

On 3 January 2020, the Tribunal advised the parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 24 January 2020. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held at Riverside House, 502 Gorgie Road, Edinburgh, on the afternoon of 4 February 2020. The Parties were all present.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

Ground 1 of Part I of Schedule 5 to the 1988 Act states that the Tribunal must order Possession if, no later than the beginning of the tenancy, the landlord gave notice in writing to the tenant that possession might be recovered on this Ground and that, at any time before the beginning of the tenancy, the landlord occupied the Property as her only or principal home, or the landlord seeking possession requires the house as her only or principal home.

The Tribunal was satisfied that the Property had been the Applicant's only or principal home at the date of issue of the Council Tax Notice for 2013/2014 and that Notice in writing had been given to the Respondent in the Short Assured Tenancy Agreement that possession might be recovered under Ground 1 of Part I of Schedule 5 to the 1988 Act. The Applicant had also stated that she now required the Property as her only or principal home. The view of the Tribunal was that all the requirements of Ground 1 had been met and that the Tribunal was, therefore, bound to make an Order for Possession of the Property.

Decision

The Tribunal determined that the application should be decided without a Hearing and made an Order for Possession of the Property. The Order would not be enforceable until 12 noon on 8 March 2020, following the expiry of the appeal period.

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.

G.Clark

Legal Member/Chair

4 February 2020

Date