

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/23/0789

Re: Property at 6 South Hamilton Road, North Berwick, EH39 4NL (“the Property”)

Parties:

Mr Gregor Mcleod, Ms Pirodja Lawyer, 37A Jalan Balau, Damansara Heights, Kuala Lumpur, 50490, Malaysia (“the Applicants”)

Mr Donald Kennedy, Mrs Selena Kennedy, 6 South Hamilton Road, North Berwick, EH39 4NL (“the Respondents”)

Tribunal Members:

Virgil Crawford (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the First Respondent)

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

BACKGROUND

1. By lease dated 7th October 2019 the Applicants let the Property to the Respondents;
2. The Applicants have been living in Malaysia for a number of years but wish to return to Scotland. They have no other property in Scotland.
3. The Applicants wish to reside in the Property themselves but intend to extend and renovate it first. Appropriate building warrants and planning permission have already been granted;
4. The Applicants served a notice to leave on the Respondents on 9th November 2022 advising they wished recovery of the Property.
5. A notice in terms of s11 of the Homelessness Etc. (Scotland) Act was intimated to the local authority.

6. An application seeking an eviction order was presented to the Tribunal on 10th March 2023.
7. The Second Respondent forwarded submissions to the Tribunal on 15th June 2023 in which she highlighted significant health issues affecting her youngest child. She has 3 children in total. It is not necessary to rehearse the medical issues here, but it was not disputed that the child would need alternative accommodation which suited his needs.

THE CASE MANAGEMENT DISCUSSION AND DECISION

8. The Applicants participated in the Case Management Discussion. They were represented by Mr J McKeown of Messrs Jackson Boyd, Solicitors, Glasgow.
9. The Second Respondent, Mrs Selena Kennedy participated in the Case Management Discussion. The First Defender, Mr Donald Kennedy did not. Mrs Kennedy advised that she and Mr Kennedy were now separated and he no longer resided at the Property.
10. The Tribunal was in receipt of a certificate of intimation by Sheriff Officers confirming that the proceedings had been intimated upon the First 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 First 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 his absence in accordance with Rule 29 of the FTT regs;
11. Mr McKeown confirmed his clients were seeking an eviction order to enable them to refurbish the Property and thereafter to reside in it. Mrs Kennedy did not dispute those intentions. She highlighted, however, the difficulties she has encountered finding suitable alternative accommodation having regard to the needs of her son.
12. Mrs Kennedy advised that she has been actively trying to find another property but in the private sector they have either been too expensive, in high demand such that she has not been successful in attempts to secure one, or some have required proof of income of a level greater than hers.
13. She advised she has engaged with the local authority also but has not been offered any suitable alternative accommodation.
14. She expressed sympathy for the Applicants and the position they were in. They have treated her fairly throughout her tenancy. She accepted they would wish to “crack on with the work”, but she had to have regard to the needs of her family and her son in particular.

15. Mrs Kennedy made it clear she was willing to move out but needed more time.
16. The submissions by the Respondent raised issues of reasonableness of an eviction order being granted, at this point in time at least.
17. The Parties accepted that this application is one which was affected by the Cost of Living (Tenant Protection) (Scotland) Act 2022 (“the 2022 Act”) and that, even if an eviction order was granted it could not be enforced for 6 months. The practicalities of the possible Tribunal procedure were also discussed, in particular, if a hearing was assigned it is likely to be fixed approximately 8 – 12 weeks hence. If an eviction order was granted then it would most likely still be affected by the 2022 Act.
18. The Tribunal was in a somewhat unusual position. There was little in dispute between the Parties. The Respondent was clearly intending to remove herself from the Property as soon as suitable accommodation became available. While a hearing could be fixed to determine the issue of reasonableness, given the acceptance by all Parties of the issues affecting each other, the Tribunal enquired of the Parties whether the matter could be determined by an order for eviction being granted with an extended period being allowed before it could be enforced.
19. The Tribunal adjourned proceedings for a period to enable the parties to consider their positions and to enable Mr McKeown to give advice to the Applicants and obtain instructions in private.
20. When the Tribunal reconvened Mr McKeown confirmed the Applicants would be content with an order for eviction being granted but the enforcement date being deferred for 9 months. Mrs Kennedy also agreed to that proposal. She was made aware that if she finds suitable accommodation sooner she can, of course, give notice and vacate the Property.
21. In the circumstances, the Parties having reached agreement in relation to the order to be granted, the Tribunal granted an order for eviction, which order, however, is not to be enforced before 12 noon on 29 March 2024.

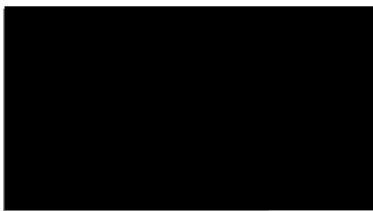
DECISION

The Tribunal grants order to Officers of Court to eject the Respondents and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property at 6 South Hamilton Road, North Berwick, EH39 4NL and to make the same void and redd that the Applicants or others in their name may enter thereon and peaceably possess and enjoy the same.

Order not to be executed prior to 12 noon on 29th March 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.



30 June 2023

Legal Member/Chair

Date