



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/20/2219

Re: Property at 111 Easton Drive, Shieldhall, Falkirk, FK1 2DW (“the Property”)

Parties:

Mrs Aine Knapton, 9 Rosses Quay, Rostrevor, Newry, County Down, BT34 3GL (“the Applicant”)

Ms Anne Johnstone, Northwood Central UK Ltd, 9-11 Bank Street, Falkirk FK1 1NB (“the Applicant’s representative”)

Mr Sergio Morello, Mrs Marina Tessaro, 111 Easton Drive, Shieldhall, Falkirk, FK1 2DW (“the Respondent”)

Diego Morello, 111 Easton Drive, Shieldhall, Falkirk FK1 2DW

Tribunal Members:

Mary-Claire Kelly (Legal Member), Eileen Shand (Ordinary Member) and Josephine Bonnar (Legal Member [Reviewer])

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for recovery of possession subject to the execution of the order being suspended until 18th May 2021.

Background

1. By application dated 20th October 2020, the applicant seeks an order for recovery of possession. The applicant seeks to rely on Ground 1(b) in Schedule 5 of the Housing (Scotland) Act 1988.
2. The following documents were lodged with the application:

- Copy Short Assured Tenancy
- Form AT5
- Form AT6
- Notice to quit
- Section 11 notice

The Hearing – by teleconference – 18th January 2021

3. The applicant, applicant's representative, second respondent and Diego Morello attended the hearing. Mr Morello is the respondents' son and advised that the Tribunal that he wished to represent his parents at the hearing. He advised that his father was unable to attend due to ill health. Having confirmed the position with the second respondent the Tribunal allowed Mr Morello to act as his parents' representative.
4. The second respondent confirmed that the various documents referred to in paragraph 2 were accurate copies of the documents she had received.

Evidence from Anne Johnstone

5. The applicant's representative confirmed that she would give evidence. She would also call the applicant and her husband, Philip Knapton as witnesses.
6. The applicant's representative is the managing director of Northwood Central UK Ltd, the letting agents who manage the property. She confirmed that the property is a large detached 5-bedroom house with a double garage. The rent is £750 per month and has not increased since the respondents moved in during January 2017. She explained that the respondents had paid rent regularly throughout the duration of the tenancy and there had been no concerns about their conduct during the tenancy. She explained that she had acted on the applicant's instructions and issued a notice to quit and form AT6 on the respondents in July 2020. The applicant had previously contacted her to confirm that she and her family were returning from a period living abroad and wished to return to the family home at 111 Shieldhill Drive. The tenants had previously been informed that the applicant and her family would be

returning to the property at some point. The respondents did not move out of the property at the expiry of the period of notice and accordingly the present action was necessary. She had given assistance to the respondents by directing them to sources of alternative accommodation and advising them by email that they should approach the local authority for assistance. The respondents had a pet but that did not mean that it would not have been possible for them to source alternative accommodation.

7. The applicant's representative explained that there had been a slowing of the property market due to the coronavirus pandemic however, there was still a supply of properties and it should have been possible for the respondents to find somewhere else to live. The applicant had returned from abroad when her husband had been made redundant and had been unable to live in their previous home. This was extremely stressful for her. The family had stayed in an Airbnb for a short period before moving to Northern Ireland to live in a holiday home. The current situation was a cause of financial concern to the applicant and her husband as they were paying storage costs for their furniture and possessions. In her view the respondents were looking for accommodation which was comparable to that which they currently occupied. That was leading to a delay in their finding accommodation. She advised that the respondents had a large amount of personal possessions in the property.
8. The applicant's representative explained that her company had not been the letting agents at the time the lease was signed but were instructed at a later date. She was unable to produce a notice as required in terms of section 1, which would have been served prior to the creation of the tenancy. She explained that the respondents were well aware of the applicant's intention to return to the property.

Aine Knapton's evidence

9. The applicant explained that she and her husband had bought the property at 111 Easton Drive, Shieldhill in April 1995. They had moved to the area because of her husband's work in the oil and gas industry. They had two daughters aged 27 and 25. The children had been raised in the house and had attended local schools. The applicant and her husband were originally from Northern Ireland however, they had not lived there since 1986. They had

purchased a holiday home in County Down to stay in when they returned to visit relatives.

10. The applicant advised the Tribunal that her husband had been offered work abroad in 2017. The family intended to return to the property but decided to rent it out whilst they were abroad. The applicant, her husband and their 25-year-old daughter had been living in Abu Dhabi before their return to Scotland. The applicant's daughter worked as a nurse there. The applicant explained that her husband's employment in the oil and gas industry had come to an end in 2020 when he was made redundant, and they decided to return to Falkirk. She had contacted her letting agents and asked for notice to be served on the respondents.
11. The applicant confirmed that she had inspected the property on two occasions when she had been visiting from abroad. She had spoken to the second respondent and discussed how it was her intention to return to the property. She had no doubts that the respondents knew of the family's intention to return to the property.
12. The applicant explained that the respondents' failure to move out of the property had been very disruptive. The impact of not being able to return to the family home was very stressful. It had been a considerable challenge to arrange for all their possessions to be shipped back. As the property was not vacant, they had been paying for storage in the local area. She referred to an invoice which had been lodged which showed that the storage cost was £280 every four weeks. The applicant explained that the lives of herself and her husband were on hold. They were also experiencing financial stress arising from the storage costs. In addition, it had been her husband's intention to look for new employment upon his return. As he works in the oil and gas industry, in order to gain employment, he needed to be in the area of the property which is close to the Grangemouth oil and gas industry. As they had no income, they were relying on savings to live. She explained that the property in Northern Ireland had two bedrooms. It was much smaller than her previous home and it was not suitable for the family long term. They were living there at present as they had no alternative.
13. The applicant advised that Falkirk was where the family considered home. Her 25-year daughter who was at present in Abu Dhabi was waiting for the

situation with the property to be resolved so that she could return to live there with her parents. It was her intention to continue her nursing career in the NHS if she could return.

Evidence of Philip Knapton

14. Mr Knapton is the applicant's husband. His evidence corroborated the applicant's submissions. In addition, Mr Knapton confirmed that before moving abroad he had been employed by BP at Grangemouth. He had signed a three-year contract to work abroad. When that employment had come to an end the family's intention was to return to Falkirk. He explained that in order to gain new employment he required to be in Scotland. The nature of his previous employment meant that it was not possible for him to work from home. He explained that he was using money that was intended for retirement to cover their cost of living. He explained that he felt that his life was on hold and referred to the stress of the current living arrangements, with the family's personal possessions being held in storage.

Diego Morello's evidence

15. Mr Morello confirmed that his father, the first respondent, is 68 years old. His mother, the second respondent, is 65 years old. The first respondent is a retired taxidermist and has an income of £65 per month. The second respondent is an accounts assistant employed by Sky. Her income is approximately £23,000 per year. Mr Morello is 25 years old. He graduated last June from Heriot Watt University with a degree in Microbiology. He lives with his parents in the property. His older brother resided there until September 2020. Mr Morello explained that his family are originally from Italy. His parents moved to Scotland with their two sons in 2013 to seek employment. They had lived in a rented property in Bo'ness for a period after they moved to Scotland.

16. Mr Morello explained that his father suffered from multiple health problems. He had been diagnosed with diabetes and had suffered two heart attacks. His mobility had been declining when he was diagnosed with multiple aneurysms behind both knees. He underwent surgery on one knee in September 2020. The surgery resulted in his father's mobility being very limited however that had recently started to improve. His father was awaiting a date for surgery on

the other knee. Mr Morello advised that his father was unable to work due to ill health. He required considerable care particularly during his recent convalescence from surgery. This placed both he and his mother under stress. His mother was working full time and also caring for his father which was difficult for her. His father was unable to help around the house as he had done previously.

17. Mr Morello explained that since the family had been served with notices asking them to leave the property, they had been trying to reduce the amount of their personal possessions in the property. This process was continuing.
18. Mr Morello gave evidence at length about the family's efforts to find alternative accommodation. He lodged multiple emails showing correspondence with letting agents. In summary Mr Morello's position was that despite the family's best efforts it had not been possible for them to secure suitable alternative accommodation prior to the hearing. He explained that a large number of properties were immediately ruled out as they did not accept pets. The family had one dog. In addition, he referred to the lack of properties that had been available in the period after notice had been served. He explained that due to the pandemic there had been a lack of properties for rent coming onto the market and this had hampered their attempts to secure accommodation. Mr Morello also referred to properties which he and his mother had viewed but which were too small. He had viewed properties which they had refused because it would not have been possible to fit a double bed in the bedroom. Mr Morello stated that the applicant's agency had done nothing to help them find somewhere else to move. He was very clear that the family had been making their best efforts to find a property under very difficult circumstances and disputed the applicant's representatives submission that it would have been realistic for them to have secured alternative accommodation by now. When asked whether the family were being too selective in terms of the properties they were prepared to consider, Mr Morello disagreed with that.
19. Mr Morello explained that before signing the lease the family had not been aware that the landlord intended to return to live in the property at some point in the future. He explained that they first time his family were aware of this intention was six months after the tenancy commenced when the landlord visited the property to carry out an inspection.

20. Mr Morello explained that his family wanted to find somewhere else to live as soon as possible. He had noticed that more properties had been on the market recently. They had been successful in an application for a property near Dunfermline. Mr Morello advised that it would be impossible for them to move there without a large amount of stress. Mr Morello is due to start a new position as a microbiologist in Livingston shortly. The commute from Dunfermline by public transport would be excessive leaving his mother alone at home for long periods of time with his father. In addition, his mother was working from home and reliant on a suitable broadband connection. The property near Dunfermline had a poor broadband connection which in his view would cause great difficulty. Mr Morello also referred to another property which had been identified and which may be suitable. They needed more time to explore that option. Mr Morello explained that the family would be receiving help from his brother to finance the move. He confirmed that a deposit of £1000 had been paid at the commencement of the tenancy. Mr Morello advised the Tribunal that he was confident that he would find suitable accommodation within a couple of months.

Evidence of Maria Tessaro

21. The second respondent advised the Tribunal that she agreed with everything her son, Diego Morello had said and had little else to add. She stated that in her view the family had been trying their best to find somewhere else to live. She did not want to stay at the property any longer as it was a nightmare. The family needed more time to find a new home. She had not sought assistance from the local authority as she did not think it was appropriate for her to seek help under the homelessness provisions and the family wanted to look after themselves rather than get help from the local authority.

Findings in fact

22. The parties entered into a short assured tenancy agreement in respect of the property. The tenancy commenced on 19th January 2017. The initial term of the lease was for six months. The lease continued on a month to month basis thereafter. The rent payable in terms of the lease was £750 per month.

23. The property is a five-bedroom detached property.

24. The property is currently occupied by the respondents and their son Diego Morello.
25. The first respondent is aged 68, the second respondent is aged 65.
26. A valid AT6 dated 13th July 2020 was served on the respondents.
27. A valid Notice to quit was served on the respondents dated 10th July 2020.
28. The applicant and her family resided in the tenancy as their principal home in the period from April 1997 to January 2017 before they moved abroad.
29. The applicant and her family intended to return to the property after their period abroad.
30. No notice was served on the applicants in terms of ground 1 in Schedule 5 of the Housing (Scotland) Act 1988 advising the respondents that possession might be recovered in terms of ground 1.
31. The tenancy agreement signed by parties contained a summary of the grounds for recovery of possession that might be used to recover possession, including ground 1.
32. The respondents became aware of the applicant's intention to return to the tenancy six months after the tenancy commenced.
33. The applicant and her family have no alternative accommodation in Scotland.
34. The applicant has been paying to store her family's possession in a storage unit in Falkirk.
35. The applicant and her husband are residing in a holiday property with two bedrooms in Northern Ireland.
36. The applicant's husband is not working. He requires to live in Scotland for the purposes of securing suitable employment.
37. The applicant's daughter, who is employed as a nurse will return to Scotland if the family can return to their family home.
38. The applicant and her family have suffered stress and disruption as a result of not returning to their previous family home.
39. The first respondent is in poor health and has limited mobility.
40. The respondents have made efforts to find alternative accommodation.
41. The respondents no longer wish to reside in the property and are focussed on finding a new home.
42. The respondents and their son have experience significant stress as a result of the present application.

43. The respondents' efforts to find accommodation has been affected by the change in the property market due to the coronavirus pandemic.
44. The respondent's efforts to find accommodation has been affected by their owning a pet.

Reasons for Decision

45. The applicant seeks to rely on ground 1 in Schedule 5 of the Housing (Scotland) Act 1988. The ground states:

"1. Not later than the beginning of the tenancy the landlord (or, where there are joint landlords, any of them) gave notice in writing to the tenant that possession might be recovered on this Ground or the [First-tier Tribunal]¹ is of the opinion that it is reasonable to dispense with the requirement of notice and (in either case)—.....

(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]² only or principal home, and neither the landlord (or, in the case of joint landlords, any one of them) nor any other person who, as landlord, derived title from the landlord who gave the notice mentioned above acquired the landlord's interest in the tenancy for value."

The Tribunal accepted the applicants evidence that she required the house for use as her principal home. Accordingly, part (b) of the ground was established. However, the applicant had failed to serve notice at the beginning of the tenancy stating that they would seek to rely on ground 1. The Tribunal therefore required to consider whether it was reasonable to dispense with the requirement of the notice.

46. The Tribunal considered that it was reasonable to dispense with the requirement of the notice. The Tribunal took into account that the tenancy agreement stated that the ground might be relied upon to recover possession. The Tribunal also gave weight to the evidence that the applicant had advised the respondents that she wished to return to the property during the course of an inspection. The second respondent and her son confirmed that this notice was given six months after the commencement of the tenancy. The Tribunal noted that the applicant instructed letting agents who were aware of her

intention to return to the property. It would have been reasonable for her to expect that appropriate notices had been served. In considering whether it was reasonable to dispense with the requirement to serve notice the Tribunal took into account the factors discussed below as to whether it was reasonable to grant an order for repossession as the Tribunal considered that these also had a bearing on the decision to dispense with the requirement to serve notice.

47. Consideration of reasonableness and suspension of enforcement

In terms of section 18(4) of the Housing (Scotland) Act 1988 as amended by the Coronavirus (Scotland) Acts:

18 (4) If the First-tier Tribunal is satisfied that any of the grounds in Part I or Part II of Schedule 5 to this Act is established, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

Section 20 (2) of the said Act as amended by the Coronavirus Act 2020 states:

(2) On the making of an order for possession of a house let on an assured tenancy or at any time before the execution of such an order, the First-tier Tribunal, subject to subsection (6) below, may—

(a) sist or suspend execution of the order; or

(b) postpone the date of possession,

for such period or periods as the Tribunal thinks fit.

48. The Tribunal found the applicant, her husband and her representative to be believable and credible. Their evidence was consistent and went largely unchallenged by the respondents. The Tribunal gave weight to the many difficulties described by the applicant and her husband. The Tribunal had sympathy for the fact that the property had been the family home for a number of years and the family had close links to the area. The applicant was now living in Northern Ireland where she had not resided since 1987. The Tribunal had sympathy for the applicant and her husband's evidence that their lives were on hold. The Tribunal also gave weight to the financial implications of the present situation as outlined by the applicant and Mr Knapton in their evidence. The Tribunal gave weight to the fact that the respondents had been aware since mid-2017 that the applicants wished to return to the property.

The Tribunal accepted the applicant's evidence that it was not possible for the family to continue to reside in their holiday accommodation in the long term.

49. The Tribunal accepted the majority of Mr Morello's and the second respondent's evidence as truthful. The Tribunal accepted the second respondent and Mr Morello's evidence that they had been actively looking for another property. The Tribunal accepted that there had been barriers to their securing the property, in particular the impact of the coronavirus pandemic on the property market and the reluctance of landlords to accept tenants with pets. The Tribunal accepted the second respondent's and Mr Morello's evidence regarding the family's personal circumstances and the stress of their current situation. However, the Tribunal preferred the evidence put forward by the applicant's representative that the respondents were being selective in their search for an alternative property and that this was due to the high quality of their current accommodation and the relatively low monthly rent charge. The Tribunal had sympathy with the respondents and considered that their current circumstances were extremely stressful. The Tribunal gave weight in particular to the evidence of both the second Respondent and Mr Morello that they no longer wished to reside in the property. The Tribunal also gave weight to the evidence of Mr Morello that he felt sure that given a couple of months he would be able to find suitable alternative accommodation as there were now more properties available and he was pursuing certain properties at present.

50. Having considered the evidence put forward by parties the Tribunal determined that it was reasonable in the circumstances to grant an order for recovery of possession. However, having sympathy with the respondents personal circumstances and the barriers they had faced in securing accommodation the Tribunal determined to suspend the execution of the repossession order until 18th May 2021.

- Decision

The Tribunal determined to grant an order for recovery of possession subject to the execution of the order being suspended until 18th May 2021.

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.

Mary-Claire Kelly



22 January 2021

Legal Member/Chair

Date