



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18(1) of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/21/1812

Re: Property at 1 Lammermuir Crescent, Dunbar, EH42 1DQ (“the Property”)

Parties:

Mr David Currie, 104 Riverside Drive, Haddington, East Lothian, EH41 3QP (“the Applicant”)

Mr Taylor Carlile, Ms Kerry Kirk, 1 Lammermuir Crescent, Dunbar, EH42 1DQ (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the applicant was entitled to an order for the possession of the property and the ejection of the Respondent.

Background

1. By application dated 24 July 2021 the Applicant applied to the Tribunal for an order for possession of the property under Ground 1 of Schedule 5 of the Housing (Scotland) Act 1988. The Applicant submitted a copy of the tenancy agreement, Form AT5, Notice to Quit and Form AT6 in support of the application. Following further correspondence with the Tribunal administration the applicant amended the application and submitted a copy of a Section 11 Notice sent to East Lothian Council.
2. By notice of Acceptance dated 27 August 2021 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

The Case Management Discussion

3. A CMD was held by teleconference on 5 October 2021. The Applicant attended in person and was supported by his wife Mrs Patricia Currie. The Second Respondent also attended in person. The Second Respondent confirmed that the first respondent would not be attending.
4. The parties confirmed that there was a Short Assured tenancy in place that had commenced on 28 February 2016 and had endured until 31 August 2016 and continued from month to month thereafter at a rent of £850.00 per calendar month.
5. The Respondent said that she did not take issue with the service of the Notice to Quit or the Form AT6 and fully accepted that the Applicant was entitled to possession of his property. She explained that she had applied to East Lothian Council for housing and they had indicated that they would provide a home for the family once the Tribunal granted the order for possession. She explained she had an autistic son. The only issue was the timing of when the order was granted and whether that was in 14 or 28 days.
6. For his part the Applicant confirmed that he had been diagnosed with cancer and was receiving treatment. He required a property with a ground floor bedroom and bathroom and therefore wished to return to his family home.
7. The Respondent confirmed she understood the Applicant's situation and was not opposing the order being granted.

Findings in Fact

8. The parties entered into a Short Assured Tenancy agreement that commenced on 28 February 2016 at a rent of £850.00 per calendar month.
9. The Respondent was served with an AT6 by Sheriff Officers on 16 April 2021.
10. Intimation of the proceedings was sent to East Lothian Council by virtue of a Section 11 Notice.
11. The Applicant requires possession of the house for use as his principal home due to his ill health.
12. The Respondent does not oppose the order being granted.

Reasons for Decision

13. The Tribunal was satisfied from the documents produced and the oral submissions of the parties that they had entered into a Short Assured tenancy that commenced on 28 February 2016 and continued until 31 August 2016 and from month to month thereafter.

14. The Tribunal was also satisfied that the Respondent had been properly served with Form AT6 and that the Applicant was seeking possession of the property on the ground that it was required as his principal home. The Tribunal was also satisfied that it was reasonable to grant the order which would have been mandatory were it not for the provisions of the Coronavirus (Scotland) Act 2020. In doing so the Tribunal took account of the serious ill health of the Applicant and his need to sell his current home and find a property with a ground floor bedroom and bathroom and the fact that the property was the Applicant's previous family home. The Tribunal also took account of the Respondent's position which was that she was not opposing the application and had been advised by her local authority that she would be provided with a house once she had been given a date for her eviction.
15. Taking everything into account the Tribunal was satisfied it had sufficient information before it to make a decision without the need for a hearing and determined that it should grant the order for possession.

Decision

16. The Tribunal finds the applicant entitled to an order for possession of the property and the ejection of the Respondent from the property.

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.

**Graham Harding
Legal Member/Chair**

**5 October 2021
Date**