



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section s18 of the Housing (Scotland) Act 1988 (“The Act”)

Chamber Ref: FTS/HPC/EV/21/2582

Re: Property at Kendrum Park House, Bridge of Tilt, Blair Atholl, Pitlochry, PH18 5SX (“the Property”)

Parties:

Mr Edward Anthony Richards, Mrs Patricia Mary Richards, 73 Hillside Crescent, Enfield, Middlesex, EN2 0HP (“the Applicants”)

Mr Peter Aylward, Kendrum Park House, Bridge of Tilt, Blair Atholl, Pitlochry, PH18 5SX (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Mike Scott (Ordinary Member)

Decision

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

Background

The Applicant seeks an Eviction order primarily on the basis of s 33 of the Act. A s 33 Notice and a Notice to Quit had been served on the Respondent by Sheriff Officers and the notice provided the requisite period of notice to the Respondent and tied in with the *ish* date of the short-assured tenancy itself.

The Applicant has also intimated the necessary notice to the local authority in respect of s 11 of the Homelessness Etc. (Scotland) Act 2003.

The Respondent had submitted representations in the form of an email dated 8 December 2021 opposing the Application and again confirmed that opposition at the Case Management Discussion (CMD) that took place on 20 December 2022.

The Application also included reference to Ground 1 of Schedule 5 to the Act and the relevant AT6 had also been served on the Respondent at the same time as the s33 Notice. The Applicant however was primarily relying on the s33 Notice.

The s33 Notice and Notice to Quit had been competently completed and served on the Respondent on 19 March 2021 allowing the Tribunal to consider granting the Application. However, the Tribunal still had to consider the reasonableness or otherwise of making any order.

Given the Respondent's position, the Tribunal wished to carefully consider the reasonableness or otherwise of granting the Application which the Tribunal is obliged to do by virtue of the Coronavirus (Scotland) Act 2020.

At the CMD the Tribunal had noted that the Respondent is a 77-year-old man with health issues who also states that he is the primary carer for his two adult sons, one of whom is described by the Respondent as having serious disabilities.

The Respondent also wished for legal advice and described how he had a previous solicitor who had informed the Respondent that he was unable to assist the Respondent with the Tribunal processes.

The Tribunal decided that the issue of the reasonableness or otherwise of granting the Application should not be determined without an evidential hearing.

Directions were also made obliging the Respondent to lodge any medical evidence relevant to the Respondent's health issues or caring responsibilities in advance of the Hearing. The Respondent was also ordered to lodge further written representations setting out in full his position about why he argues that it is not reasonable for the Application to be granted.

Both sides were urged at the CMD to pay close attention to the Directions made.

The Respondent had failed to comply with the Directions made and no further information had been submitted by the Respondent in advance of the Hearing scheduled to take place on 7 February 2022.

The Hearing

The Application called for a Hearing by conference call at 10 am on 7 February 2022. Both Applicants were present with their representative Ms McCartney of Kippen Campbell LLP. The Respondent was also on the call. The Application called alongside a related Application between the parties in respect of a Payment Order.

The Tribunal began by considering preliminary matters and in particular sought an explanation from the Respondent as to his apparent failure to comply with the Directions made.

The Respondent indicated that he had been suffering from depression and also made references to a failure to secure legal representation and also referred to the stress that the Tribunal process has caused him. Reference was also made to knee surgery which the Respondent appeared to require in the future.

The Respondent's explanations were scattergun and at times the Respondent also referred to an apparent unfairness as a result of the Applicants having a solicitor to represent them. The Respondent also spoke about difficulties in trying to get medical information.

The Tribunal did not find the Respondent's explanations convincing and the Respondent's whole attitude and style of verbal delivery appeared to convey an attitude of contempt and indignation that he was being asked about such matters.

The Tribunal unanimously took the view that the Respondent was clearly looking to avoid an Eviction Order being granted and saw frustrating the process as a legitimate tactic to secure that end. The Tribunal were not satisfied that the Respondent had done enough to adhere to the Directions made.

The Respondent had not taken advantage of the opportunity provided by the Tribunal to better explain his domestic situation. The Tribunal considered that this was a task that could have been achieved relatively simply and the terms of the Directions made were not particularly onerous.

The Applicants had lodged representations and documentary evidence to support their position that it was reasonable to grant the order sought. They had produced information which confirmed the reasons for the Applicants' own personal desire to live in the Property and information about their own health difficulties which in part explained their desire to live in the Property.

The Tribunal considered that the process should not be frustrated as a result of the Respondent's less than convincing reasons for not complying with the Directions made.

The Tribunal decided to determine the Application based on the information presented and available to the Tribunal today. Given the Respondent's failure to comply with the Directions, the Tribunal decided to take a flexible approach and hear from the Respondent directly and Ms McCartney about the relevant issues rather than by taking evidence in a formal manner.

The Tribunal then adjourned to fully consider matters. The Tribunal made the following findings in fact.

Findings in Fact

- I. *The Applicants let the Property to the Respondent on a short assured tenancy which commenced on 23 September 2011;*
- II. *The Applicants competently served a s33 Notice under the Act and a Notice to Quit that called upon the Respondent to vacate the Property by 22 September 2021;*
- III. *The Respondent failed to vacate the Property;*
- IV. *The Applicants validly served a Notice under s11 of the Homelessness Etc. (Scotland) Act 2003 on the relevant local authority;*
- V. *The Tribunal have given the Respondent adequate opportunity to produce evidence such as might support the Respondent's position that his domestic circumstances ought to preclude an Eviction Order being made;*
- VI. *The Applicants' own circumstances suggest an entirely reasonable and legitimate motivation as to why they wish to live themselves in the Property.*
- VII. *The Respondent has, without good cause, failed to provide the required information such as might allow the Tribunal to properly consider the merits or otherwise of the defence suggested at the CMD;*
- VIII. *It is reasonable that the order sought is granted.*

Reasons for Decision

Having made the above findings in fact, the Tribunal considers that the terms of s 33 of the Act have been engaged and that it is reasonable to grant the Application. The Tribunal therefor grants the Application and makes an Eviction Order.

The Applicants sought an award of expenses to be made in their favour. The Tribunal considered this carefully but did not conclude that the Respondent's conduct was such as to merit any award of expenses being made.

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.

Andrew McLaughlin

7th February 2022

Legal Member/Chair

Date