

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/21/2943

Re: Property at 7 Runic Place, Ruthwell, Dumfries, DG1 4NW (“the Property”)

Parties:

Mr David Stainthorpe, Alandale, Ruthwell, Dumfries, DG1 4NN (“the Applicant”)

Ms Marion Carruthers, Mr Raymond Swan, 7 Runic Place, Ruthwell, Dumfries, DG1 4NW (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be refused.

Background

1. By application dated 24 November 2021 the Applicant applied to the Tribunal for an order for possession under Ground 6 of Schedule 5 of the Housing (Scotland) Act 1988 (the 1988 Act”). The Applicant submitted a copy of the tenancy agreement, a Notice to Quit and Form AT6 with proof of service, Section 11 notice together with correspondence from the Respondents regarding the lack of central heating and the condition of the property, an issue with the mains water supply and also a letter from the local authority regarding broken roof tiles all in support of the application.
2. By Notice of Acceptance dated 23 December 2022 a legal member of the Tribunal with delegated authority accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. A CMD was held on 28 February 2022 at which the Respondents were represented by Mr Alasdair Bryce, of Pollock & McLean, Solicitors, Dumfries. The Applicant represented himself. Following discussions, the CMD was adjourned to allow the Respondents' representative to resubmit his written representations to the Tribunal.
4. The Respondents' representative submitted written representations by email on 28 February 2022.
5. The Applicant submitted further written representations by email on 4 April 2022.
6. A further CMD was held by teleconference on 11 April 2022. The Applicant did not attend. The Respondents representative Mr Bryce attended on behalf of the Respondents and following discussion the Tribunal continued the application to a hearing. Unfortunately, due to an administrative error the parties were advised the application had been continued to a further CMD. The Tribunal also issued a Direction to the Applicant requiring him to explain his failure to attend the CMD on 11 April 2022 and also to provide architectural drawings and specifications of the proposed renovations, applications for planning permission or building warrant and all quotes and estimates for the works.
7. By email dated 18 April 2022 the Applicant submitted an explanation for his failure to attend the CMD on 11 April 2022.
8. By email dated 23 June 2022 the Applicant submitted further written representations to the Tribunal in response to the Tribunal's Direction.
9. A further CMD was held by teleconference on 4 July 2022. The Applicant attended in person and the Respondents were again represented by Mr Bryce. Following discussion, the Tribunal determined to continue the application to a hearing and issued an oral direction to the Applicant regarding confirmation of the outcome of the Applicant's planning application and details of any quotes received from contractors.
10. By emails dated 13 and 16 September 2022 the Applicant submitted further written representations and documents to the Tribunal. These were intimated by the Tribunal administration to the Respondents' representative on the morning of the hearing.

The Hearing

11. A hearing was held by teleconference on 22 September 2022. The Applicant attended in person and was supported by his stepson Mr Callum Burgess. The Respondents attended in person and were represented by Mr Bryce.
12. At the commencement of the hearing, by way of a preliminary matter the Tribunal sought to ascertain if Mr Bryce had seen the Applicant's latest

submissions and been able to discuss these with the Respondents. Mr Bryce advised the Tribunal that he had briefly skimmed the documents. He had previously been aware that the planning application had been granted. He had not studied the quote from Eco Projects in detail and had noted that the quote from PlanSafe Asbestos Services was only for a survey of the property and not for the removal of any asbestos. Mr Bryce confirmed he was happy for the hearing to proceed.

13. The Tribunal queried if it was accepted that procedurally the Applicant had met the tests for an order for possession to be granted in terms of Ground 6 of Schedule 5 were it not for the provisions of the Coronavirus (Scotland) Act 2020 and the Coronavirus (Recovery and Reform) (Scotland) Act 2022. Mr Bryce confirmed that he agreed that the Form AT6 and Notice to Quit and Section 11 Notice had all been properly served but still had issues with regards to the Applicant's intention to carry out the work in addition to whether it would be reasonable to grant the order.
14. The Applicant began his submissions by suggesting that as his integrity had been called into question it was appropriate to provide some information as to his background. He said that he was employed by Dumfries and Galloway Council previously in Trading Standards and currently as a Health and Welfare Officer. He said his work involved carrying out investigations compiling reports and referring any criminal activity to the police. He went on to say that he was Chair of the Dumfries and Galloway Council Pensions Board responsible for the investment of more than one billion pounds of pension funds and was also treasurer of his Community Council and an Elder of the local parish church.
15. The Applicant went on to say that he was looking to redevelop the property in order that his stepson and future family could live there for the rest of his life. He said that the planned works were very extensive with the kitchen and bathroom being reconstructed; all asbestos tiles removed; and underfloor heating installed. He said it would not be feasible for the Respondents to remain in the property whilst the renovations took place. The Applicant said that the property did not have a heating system and the rooms would all be rewired. The property would be given a new water supply and all bathroom fittings replaced. He said a wall would be removed to allow for a new kitchen to be fitted and a vaulted roof installed in the new extension. He referred the Tribunal to the plans submitted that showed the extent of the renovations. He explained that a new en-suite bathroom would be installed, the hallway re-designed and the current living room would become a bedroom.
16. The Applicant said that it was his intention to carry out all the work and had wanted it to have been completed in time for his stepson's wedding in November. He hoped if the Tribunal granted the order that the work would commence at the earliest possible time and would be completed within one year.

17. In response to questions from Mr Bryce the Applicant explained that planning permission rather than only a building warrant had been required due to the additional height of the extension with it having a vaulted roof. The Applicant went on to say that in addition to installing windows in the attic the space was being converted into a games room.
18. Mr Bryce queried if the Applicant had also obtained a quote from William Waugh. The Applicant explained that he intended to accept the quote from Eco Projects and had advised them that he was happy to go ahead. He said that the contractor would start work as soon as he had obtained vacant possession. When asked if a building warrant was needed the Applicant confirmed that would be required for the building works but not for the stripping out. He said that he had told the architects to apply for a building warrant and had been advised that there would not be a problem obtaining one. When asked if the plans had been prepared the Applicant said that they were being prepared as we speak and went on to say that the architects like others were all busy at the moment and he was in the queue but in any event the stripping out could still progress.
19. Mr Bryce referred the Applicant to the quote from Eco Projects and queried how in the absence of detailed plans the contractor was able to base their quotation. The Applicant said that this had been done from the plans submitted for planning permission and that they would have had the dimensions from the scale provided on the plan. Mr Bryce suggested that if there had been a desperate urgency to have the work done the Applicant ought to have been getting the building warrant work done. The Applicant replied that he was waiting for the outcome of the application and that as soon as he had that he would submit the plans.
20. Mr Bryce referred the Applicant to a Repairing Standards Enforcement order granted in respect of the property by another Tribunal. The Applicant confirmed that this was the case and that it would be disposed of once the renovations had been completed. He said that all that was left was for a survey of a particular type to be carried out but that it was expensive and no local surveyors were able to undertake the work.
21. Mr Bryce queried the extent to which the Applicant had discussed the proposed works with the Respondents. The Applicant confirmed he did not have discussions with them as they had behaved in an unreasonable manner any time he had gone to visit them and had frequently called the police. The police he said had taken no action against him and had given him advice on how to deal with the Respondents.
22. Mr Bryce asked if the Applicant had offered a variation of the terms of the tenancy in order to accommodate the works. The Applicant said there had been no discussion and that it would be completely unreasonable for the Respondents to remain in the property with no bathroom and no kitchen and no walls.

23. In response to a suggestion from Mr Bryce that people frequently live in a property when they are being extended the Applicant said they did not when there was no bathroom and kitchen. In response to a further question as to whether he had offered a tenancy of part of the property the Applicant again said no not when there was no bathroom or kitchen or walls.
24. Mr Bryce queried why the Applicant had obtained a quote for an asbestos survey when it was already known that there were asbestos tiles in the property. The Applicant said that as it was an older property there may be asbestos elsewhere in the property.
25. Mr Bryce suggested to the Applicant if it was suspected that there was asbestos in the property it might have been better to have carried out a check before putting tenants into the property. The Applicant explained that he had found out about the asbestos tiles when carrying out some renovations to the bathroom. Mr Bryce suggested that at that time it had been suggested that the asbestos did not raise any concerns. The Applicant said he was not aware of that but agreed that the tiles did not need to be completely removed. He went on to say that the reason for removal now was so that underfloor heating could be installed.
26. Mr Bryce suggested that the long and the short of matters was that the Applicant wanted the property for his stepson. The Applicant said that he wanted the property for his stepson and for his family.
27. In response to a query from the Tribunal the Applicant said that the cost of the survey required in terms of the RSEO was about £3000.00. The Applicant said he could not remember the name of the firm who had provided the quote. He went on to say that his architect had charged £750.00 for the planning permission drawings and the estimate for preparing the building warrant drawings was £1800.00. He said that the contractor had been happy to prepare a quote from the existing drawings. He said he did not know if the architect was also a structural engineer.
28. In response to a further query from the Tribunal as to whether it would be possible for the work to be done around the Respondents with them moving into a hotel for a week or two, the Applicant said that would not be possible and referred the Tribunal to the plans and the extent of the renovations. He said it would take much longer than a few weeks to complete.
29. The Tribunal noted from the Applicant that he would have carried out the survey required in terms of the RSEO had the Respondents paid the rent they were due to pay. He also said that he had instructed a survey but it was not carried out by the correct person and that was why the other Tribunal had issued the breach of the RSEO. He said he had intended to carry out the correct survey but did not have the funds. The Applicant went on to say that in November 2020

his stepson had become engaged and had suggested redeveloping the property in order that he and his wife could move to live there.

30. When asked if funding was in place to meet the cost of the development the Applicant said that the family were working together to obtain a mortgage from Cumberland Building Society and they had an offer in principle for £160000.00 subject to obtaining vacant possession. On further questioning from the Tribunal the Applicant explained that his stepson was involved in obtaining the mortgage and that it was intended that he would transfer the title to the property as a gift to his stepson.
31. Mr Swan gave evidence and confirmed that he was retired and aged 79. He said he had lived in the property for eight years with his wife. He went on to say that the kitchen was a disgrace and that the double glazing that had been installed had let in draughts but that he had arranged for a contractor to install sealant and this had improved them. He said that previously an oil-fired central heating system had been installed but that this had been removed prior to his tenancy and replaced with three old style electric radiators. He said there was an old fireplace in the property and he had asked for and been granted permission to install a stove. He went on to say because of his age he could no longer chop wood for it. He said he was happy in the property but not happy with its condition. He went on to say that his wife had a nervous breakdown as a result of what had been happening and he had his own health issues. He also said it was very difficult to obtain a council house.
32. Mr Bryce asked that the Tribunal did not question Ms Carruthers or that he lead evidence from her as she was of a nervous disposition. He confirmed that although the Respondents were not paying any rent to the Applicant the sum of £300.00 per month was going into a separate bank account each month and would be paid to the Applicant once the repairs to the property had been carried out. He said that the Respondents were on the list for local authority housing but with no element of priority. He confirmed that the Respondents would prefer to remain in the property.
33. In response to a query from the Tribunal Mr Bryce confirmed that if the Tribunal were to grant the order sought a period of deferment would assist the Respondents as that would give them more time to find another property and also allow time to resolve any Section 22 removal expenses.
34. For his part the Applicant said it was not correct to say there had been no heating at the property. Although the oil central heating had been removed because a previous tenant who had mental health issues was unable to operate it electric heaters had been installed two or three years before the Respondents moved in. The heaters were therefore not old as had been suggested.
35. The Applicant agreed that the Respondents would not be a priority for a new house through the local authority at the moment but if the order was granted

they would be treated as homeless and would then be given priority for being rehoused.

36. The Tribunal asked the Applicant to address the issue of reasonableness. The Applicant said that the renovations could only be done with vacant possession of the property. He said that he had to do what is best for his property and for his family. He thought that the Respondents had behaved unreasonably by not moving out on expiry of the Notice to Quit and by withholding rent.

Findings in Fact

37. The parties entered into a tenancy agreement that commenced on 4 July 2015 at a rent of £450.00 per calendar month.
38. It was intended that the tenancy should be a Short Assured tenancy in terms of the 1988 Act but as the Respondents were not given a Form AT5 prior to the commencement of the Tenancy, the Tenancy formed was an Assured Tenancy under the 1988 Act.
39. The property is subject to a Repairing Standard Enforcement Order ("RSEO") granted by another Tribunal on 20 March 2019 and varied on 11 September 2019.
40. Following the Applicant breaching the said orders, by Notice dated 31 December 2019 a Tribunal issued a Rent Relief Order reducing the rent to be paid by the Respondents to the Applicant until such time as the breach was remedied by £150.00 per calendar month.
41. Since November 2019 the Respondents have not paid any rent at all to the Applicant but are withholding rent and paying £300.00 each month into a bank account until such time as the Applicant fulfils his obligations in terms of the RSEO and carries out repairs to the property.
42. The Applicant's stepson is engaged to be married and wishes to return to live in Rothwell near the rest of his family.
43. The Applicant has had plans drawn up for an extensive renovation of the property and has obtained planning consent from Dumfries and Galloway Council for the renovations.
44. The Applicant has not yet obtained a building warrant for the renovations.
45. It is the Applicant's intention if granted an order for possession to develop the property as a family home for his stepson.
46. The Applicant intends to gift the title of the property to his stepson.

47. The Applicant's stepson has obtained an offer in principle from Cumberland Building society to fund the redevelopment of the property subject to the Applicant obtaining vacant possession.
48. The Respondents have been properly served with a valid notice to Quit and Form AT6.
49. Dumfries and Galloway Council have been given proper intimation of these proceedings by way of a Section 11 Notice.
50. The Applicant has obtained a quote from Eco Projects to carry out the renovations at the property at a cost of £146850.97.
51. The Applicant has obtained a quote from Plansafe Solutions Ltd to provide an Asbestos survey of the property at a cost of £543.63 plus VAT.
52. The Applicant was required in terms of the Varied RSEO of 11 September 2019 to instruct a Chartered Surveyor to survey the property and prepare a report. The cost of such a report was estimated to be £3000.00.
53. The Respondents are elderly and in not particularly good health. Ms Carruthers in particular suffers from a nervous disposition.
54. No discussion has taken place between the parties as to ways in which it might be possible for the Respondents to remain in the property whilst the renovations take place.

Reasons for Decision

55. It was apparent to the Tribunal that there was a significant background to this application that went far beyond the property requiring extensive renovation to the extent that it could only be carried out by the Applicant being granted an order under Ground 6 of Schedule 5 of the 1988 Act. The Applicant had failed to comply with another Tribunal's RSEO and had been the subject of a finding that the order had been breached. The other Tribunal had imposed a Rent Relief Order. The Respondents were withholding the remainder of the rent until such time as the Applicant carried out repairs at the property. The Respondents had called the police when on some occasions the Applicant attended at the property. The Applicant would not instruct the survey report required under the RSEO because the Respondents were withholding rent.
56. There was no doubt from the documents produced and indeed as agreed by Mr Bryce, procedurally the Applicant had met the requirements necessary for making an application to the Tribunal in that a valid Notice to Quit and Form AT6 had been served on the Respondents and proper intimation of the proceedings had been given to Dumfries and Galloway Council. The issues for the Tribunal to determine were whether it was the Applicant's intention to carry out the renovations; that the works could only be carried out without the

Respondents remaining in any part of the property and by virtue of the Coronavirus (Scotland) Act 2020 and the Coronavirus (Recovery and Reform) (Scotland) Act 2022 whether it was reasonable to grant an order for possession.

57. The Tribunal noted from the Applicant's evidence that he referred to the family working together to fund the renovations. When pressed as to what this meant in reality it appeared to the Tribunal that it would be the Applicant's stepson who would in fact be granted the mortgage and the Applicant confirmed it was his intention to gift the property to his stepson. If title was transferred to the Applicant's stepson it follows that any standard security over the property would also be granted by his stepson. That then raises the question for the Tribunal as to whether it actually is the Applicant's intention in terms of Ground 6 to carry out the proposed works or whether it is the Applicant's stepson, who of course, at least at this point in time, is not the Respondents' landlord.
58. The Tribunal also had to consider if it was satisfied that the Applicant met the test of intent that it would not be possible for the Respondents to remain in the property whilst the work was being carried out. The Tribunal had the benefit of the comments contained in the quote from Eco Projects in that regard and also the evidence of the Applicant. The Tribunal was of the view that no consideration had been given to any practical ways in which it might have been possible for the Respondents to remain in the property for at least some of the time the works were being carried out primarily because it would only be possible for the works to proceed financially and for family reasons if the order for possession was granted. The Applicant would have no intention of carrying out the renovations if at the end of the day the Respondents could remain as tenants. Given the extent of the works the Tribunal accepts that it may have been very difficult although not necessarily impossible for the works to have been carried out with the Respondents remaining in the property.
59. The Tribunal also had to consider whether it would have been reasonable in all the circumstances to grant the order for possession. In reaching its decision the Tribunal took account of all the submissions made on behalf of both parties. It understood that the Applicant wanted to regain possession of his property so that he could provide a benefit for his stepson in recognition of his impending marriage. However, although it had been intended that the tenancy created between the parties should be a Short Assured Tenancy the Respondents have acquired substantial rights of tenure through having an Assured Tenancy. Furthermore although the property is subject to an RSEO it appears that the proposed renovations go far beyond what might be necessary to satisfy its outstanding terms. It seems to the Tribunal that the Applicant is seeking to use the proposed renovations as a means of obtaining possession in order to secure his primary aim which is to regain the property for his family. The Applicant may well feel aggrieved that the Respondents are withholding rent in addition to a Rent Relief Order being in place but that would be a matter for another Tribunal to determine if he so wished. The Applicant felt that the Respondents had acted unreasonably by remaining in the property on expiry of the Notice to Quit but in law they are entitled to remain until an order is granted against them.

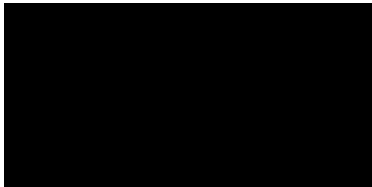
60. The Tribunal has taken account of the fact that the Respondents are elderly and not in the best of health and at present do not qualify for priority for housing through the local authority. It is no doubt correct that if an order was made against them they would be entitled to be provided with accommodation under the Homeless legislation but there is no guarantee as to what that accommodation would be or where it would be located. Despite their concerns about the property the Respondents have expressed a desire to remain.
61. Having carefully considered all of the evidence the Tribunal has concluded that there are substantial questions over the intent of the Applicant as Landlord to carry out the renovations at the property as it appears more likely than not that on obtaining vacant possession title to the property would be transferred to the Applicant's stepson who would then obtain funding to proceed with the renovations. Although perhaps unlikely that the Respondents could have remained in the property throughout the duration of the works no consideration was given to how this might be achieved and for these reasons the Tribunal refuses the application.
62. However even if the Tribunal had found that the Applicant was entitled procedurally to an order under Ground 6 subject to it being satisfied that it was reasonable to grant the order then it would not have granted the order as it would not be reasonable to do so. The Tribunal is of the view that the works envisaged by the Applicant go far beyond what is necessary to put the property into good order. They are only being contemplated in order to bring the tenancy to an end rather than to complete what is required to comply with the outstanding RSEO. The Tribunal in exercising its discretion in these matters does not consider it should give more weight to the Applicant's desire to assist his stepson when that is balanced against the resulting outcome of rendering an elderly couple in poor health homeless and left to the vagaries of the local authority to find them accommodation when they wish to remain in the property that has been their home for the past seven years and in which they enjoy a degree of security of tenure.
63. Following the oral decision being given at the hearing Mr Bryce explained that as his clients were legally aided and as the application had been refused, he was expected by the Scottish Legal Aid Board to make an application for the expenses of the application and asked the Tribunal to make an award of expenses against the Applicant. The Tribunal noted Mr Bryce's submission and whilst the Applicant had failed to attend a CMD on one occasion had offered an explanation for this and it had not resulted in any substantial delay and the Tribunal refused the application for expenses.

Decision

64. The Tribunal having carefully considered all the written representations and documents and the oral evidence and submissions refuses the application and refuses the Respondent's representatives application for expenses.

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

22 September 2022
Date