



**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/22/0371

**Re: Property at 101 Paterson Ave, Irvine, North Ayrshire, KA12 9LW (“the
Property”)**

Parties:

**Mrs Christine Campbell, 28 Titchfield Way, Irvine, North Ayrshire, KA11 1PP
 (“the Applicant”)**

**Ms Janice Black, 101 Paterson Ave, Irvine, North Ayrshire, KA12 9LW (“the
Respondent”)**

Tribunal Members:

George Clark (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Parties)

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

Background

By application, received by the Tribunal on 8 February 2022, the Applicant sought an Order for Possession of the Property under Section 18 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Ground relied on was Ground 1 of Part 1 of Schedule 5 to the 1988 Act, namely that the Applicant landlord requires the Property as her only or principal home.

The application was accompanied by copies of (i) a Short Assured Tenancy Agreement between the Parties commencing on 6 May 2016 and, if not brought to an end by either party on 7 November 2016, continuing from month to month thereafter until terminated by either party giving two months’ written notice to the other (ii) a Notice given under Section 32 of the 1988 Act that the tenancy was to be a Short Assured Tenancy (iii) a Notice dated 6 May 2016, advising the Respondent that possession might be recovered under Ground 1 or Ground 2 of Schedule 5 to the 1988 Act and (iv) a Form AT6 Notice given under Section 33 of the 1988 Act and

a Notice to Quit, both dated 26 October 2021 the latter requiring the Respondent to vacate the Property by 7 February 2022 and the former advising the Respondent that the Applicant was seeking possession of the Property under Ground 1 of Schedule 5 to the 1988 Act and that proceedings would not be raised before 8 February 2022.

In the application, the Applicant stated that she was currently living with her daughter, but that her daughter was now selling that house and the Applicant required to move back into the Property as her principal home.

On 1 March 2022, the Applicant sent the Tribunal a copy of an offer from her son-in-law to purchase the Property. She stated that the Property was her and their family's home when her son-in-law was married to her daughter and that he intended to purchase the Property for both himself and his son, who currently lived with the Applicant.

On 13 April 2022, the Applicant's letting agents, Ayr Estate & Letting Agents, forwarded to the Tribunal a statement from the Applicant contained in an email of 2 April 2022. In it, the Applicant stated that she had thought long and hard before giving the Respondent Notice to Quit, as she knew she was ill and did not really want to inconvenience her. The Applicant was currently living in her daughter's house and the financial burden of paying for two houses was becoming too difficult, so they decided to sell one property. Initially it was to be her daughter's house, but it required outside building work and trying to find a builder during the COVID-19 pandemic was proving too difficult, so the Applicant made the decision to sell the Property. Around January 2022, her son-in-law's marriage broke down and he and his son had to move out of the marital home which belongs to his current wife. His son (the Applicant's grandson) was currently living with the Applicant. Her son-in-law had been unsuccessful in bids for properties and was finding it impossible to secure a new home for himself and her grandson. The Property had been their family home and the Applicant made the decision to sell it to her son-in-law at a price below its market value. Not having a home was impacting on the mental health and wellbeing of the Applicant's son-in-law and grandson. The Applicant was hoping to conclude the sale to her son-in-law on 13 May 2022.

On 9 May 2022, the Applicant advised the Tribunal that Ayr Estate & Lettings were no longer representing her, as she was of the view that they had given the Tribunal information that was wrong. She explained that initially, she gave the Notice to Quit as she was going to be moving back into the Property which had been her family home. In December 2021, her son-in-law and grandson became homeless due to a marriage breakdown. Her son-in-law had asked if he could buy the Property and the Applicant had agreed to sell it to him at a reduced price. The sale should have gone through on 13 May 2022, but could no longer do so. As a result, the Applicant was back to moving into the Property herself. She was presently living in her daughter's home, but had been told that she had to move out, as her daughter's son and his father were moving back in. They had become homeless and had been through a traumatic episode. The Applicant's grandson had poor mental health. The Respondent is unwell and is desperate for a Council property, to be settled in her older years. The Respondent was also a carer for her small grandson.

On 9 May 2022, the Applicant's daughter advised the Tribunal that she had a son and ex-husband who had recently been subject to trauma from her ex-husband's married relationship. The intention had been that her ex-husband was going to buy the Property from the Applicant, but the sale could not proceed as the Respondent is still living in the Property. She had, therefore, had to make the difficult decision to evict the Applicant on 30 June 2022 and to allow her son and his father to live in her property.

On 14 June 2022, the Tribunal advised the parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 5 July 2022. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the morning of 27 July 2022. Neither Party was in attendance or represented. The Tribunal Clerk telephoned the Applicant to determine whether she was having difficulty in dialling in to the conference call, but the Applicant advised the Clerk that she was unwell and had forgotten about the Case Management Discussion. The Tribunal considered the application in the absence of the Parties.

The Tribunal's view was that the formal legal requirements for the application had been met and that the only issue before it was whether it was reasonable to make an Order for Possession, this being an amendment to Schedule 5 of the 1988 Act made by the Coronavirus (Scotland) Act 2020. The Tribunal decided that it was unable to make a determination on reasonability on the basis of the information before it, as the Tribunal did not know whether the Applicant is still living with her daughter and, if she is not, what her present living arrangements are. The Tribunal also wished further information as to who owns the property occupied by her daughter, whether her grandson and his father are now living there and whether the Applicant owns any other houses or flats within a reasonable geographical area of the Property. These were questions which the Tribunal would have posed had the Applicant been present at the Case Management Discussion. The Tribunal had no information on the Respondent's situation other than that provided by the Applicant and decided that it was in the interests of justice to continue the case to a further Case Management Discussion and, meantime, to issue appropriate Directions to both Parties.

On 27 July 2022, the Tribunal issued a Direction requiring the Applicant, by 26 August 2022, to:

- provide details of where she is presently living and who is living in the same household as her;
- confirm who owns the property presently occupied by the Applicant's daughter; and
- confirm whether the Applicant owns or jointly owns any other residential property.

The Applicant did not comply with the Tribunal's Direction.

Second Case Management Discussion

A second Case Management Discussion was held on the morning of 28 September 2022. Neither Party attended or was represented.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal considered that it was able to determine the application on the basis of the information before it.

Ground 1 of Part I of Schedule 5 to the 1988 Act applies where not later than the beginning of the tenancy, the landlord gives notice in writing to the tenant that possession might be recovered on this Ground and “at any time before the beginning of the tenancy the landlord who is seeking possession occupied the house as his only or principal home.” Section 18(4) of the 1988 Act provides that if the Tribunal is satisfied that any of the Grounds in Part I of Schedule 5 to the Act is satisfied, the Tribunal shall not make an Order for Possession unless the Tribunal considers it reasonable to do so.

The Tribunal was satisfied that the requirements of Ground I had been met, as the Property had previously been the only or principal home of the Applicant. The only matter for the Tribunal to decide, therefore, was whether it was reasonable to make an Order for Possession. The Tribunal had been unable to determine the matter at the Case Management Discussion on 27 July 2022 and had issued a Direction requiring the Applicant to provide information that the Tribunal required to determine whether it was reasonable to make an Order for Possession. The Applicant had failed to comply with the Direction and had chosen not to attend or be represented at the second Case Management Discussion. The Tribunal was, therefore, unable to decide that it was reasonable to make an Order for Possession, and accordingly refused the application.

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.

George Clark

Legal Member/Chair

28 September 2022
Date

