



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

Chamber Ref: FTS/HPC/EV/22/3178

Re: Property at 41 Woodcroft Ave, Largs, KA30 9EW (“the Property”)

Parties:

Mrs Lynette Whitney, 63 Ritchie Street, West Kilbride, North Ayrshire, KA23 9HF (“the Applicant”)

Ms Susan Thomson, 41 Woodcroft Ave, Largs, KA30 9EW (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Order for Repossession against the Respondent.

Introduction

This Case Management Discussion concerned an Application for Repossession in relation to an assured Tenancy under the Housing (Scotland) Act 1988

The hearing took place by teleconference. .

1. Attendance and Representation/Background.

The Applicant was in attendance. Her husband Bob Whitney was also on the call.

The Respondent was not present but was represented by Alister Meek, CHAP, 71 Princes Street, Ardrossan, KA22 8DG.

The application first called on the 29th June 2023 and was adjourned to this date to allow the Applicant a further opportunity to attend and to request that the Applicant’s representative to be told that the information required in terms

of the Directions of 4 May 2023 was still outstanding and should be provided as soon as possible.

2. Preliminary Matters

- a) The Applicant confirmed she was dealing with the application and that she had said that she had instructed her letting agent to write to the Tribunal to confirm she was no longer seeking to establish that Grounds 14 and 15 of Schedule 5, Part 1 of the Housing (Scotland) Act 1988 applied and wished to proceed on Part 1 of Schedule 5, that she intended to reside in the property as her only or principal home. She had lodged further emails regarding this. Whilst the Tribunal had not received this notification the Tribunal noted the position that she wished to proceed on this one Ground only.

- b) The Tribunal noted the intention and notice to the Respondent was clear in the application. The Respondent's representative was clear the Respondent was not opposed to the application now it was to proceed in the absence of Grounds 14 and 15. He had no objection to the Applicant specifying Ground 1 only and noting the Respondent was aware the Applicant sought an order in order to allow them to live in the property. He was clear the Respondent was not objecting and consented to allowing the application to proceed on one Ground only which was not disputed.

- c) There were no other preliminary matters raised.

3. Case Management Discussion.

The Applicant explained that she sought an order for Eviction in order to reside in the property as her principle home. She explained it would need modernisation and that her and her husband then planned to downsize. They were 58 years and 59 years respectively and were looking to retire. They wished to manage their finances to do so. They decided to do this 2 years ago. They had personal reasons following the Applicant experiencing a period of illness and this was provided in an email to the Tribunal.

The Respondent's representative said that the Respondent on the basis of the amended application was not opposed to the order sought. She had an application pending for local authority accommodation. She has support from CHAP in Ardrossan. She lives with her adult son and there are no vulnerabilities. There was no submission that the Order sought was not reasonable.

4. Findings in Fact

- 1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and that to do so would not be contrary to the interests of the parties having regard to the Overriding objective. Parties were not in dispute and all material matters were in agreement. The Respondent was not opposed to the Application. The Tribunal had all necessary documents before it. The earlier CMD had been continued given a misunderstanding between the Applicant and her letting agency.**
- 2. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property.**
- 3. The Tribunal was satisfied that the tenancy was an Assured Tenancy in terms of the Housing (Scotland) Act 1988 and dated 30th November 2016.**
- 4. The Applicant was relying on Ground 1, under Schedule 5, of the 1988 Act only.**
- 5. The Tribunal considered that the Applicant was seeking possession as she and her husband required the property as their only or principal home, in terms of Schedule 5, Ground 1 of the 1988 Act.**
- 6. A Notice to Quit had been sent to the Respondent dated 27th November 2021.**
- 7. A Copy Section 11 Notice under the Homelessness etc, (Scotland) Act 2003 to the Local Authority dated 7th September 2022 was lodged. Postal service was shown and not in dispute for same.**
- 8. Notice under Section 19 of the Housing (Scotland) Act 1988 was served on the Respondent dated 27th November 2021. The Respondent's representative accepted same. Ground 1 was specified in terms of Schedule 5, of the 1988 Act.**
- 9. The Tribunal found that the requirements of Ground 1 of Schedule 5, to the 1988 Act had been met.**
- 10. On the evidence available to the Tribunal the Respondent had no vulnerabilities, was seeing alternative accommodation and lived with her adult son. The Applicants sought to downsize and reside in the property to allow for retirement. This was accepted by the Respondent. The Tribunal found an Order was reasonable in terms of the Coronavirus (Scotland) Act 2020.**
- 11. Accordingly, the Tribunal granted an order for Repossession against the Respondents.**

Reasons for the Decision

The Tribunal heard evidence from the Applicant which satisfied the Tribunal that she intended to reside in the property as her principal home for retirement reasons. The Tribunal noted the Respondent was not objecting to the Application on the fact it proceeded on Ground 1 only now. The Tribunal determined it was appropriate to grant an Order for Eviction.

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.



Legal Member/Chair

27/07/2023

Date