

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 of the Housing (Scotland) Act 1988 (“the Act”).

Chamber Ref: FTS/HPC/EV/22/3855

Re: Property at Flat 1/1, 4 Maitland Street, Helensburgh, G84 7PB (“the Property”)

Parties:

Mr Karl Faulks & Mrs Teresa Faulks, both of The Manse, Old School Road, Garelochhead, G84 0AT per Mr John McKeown, Solicitor, Jackson Boyd Solicitors (“the applicant”)

Mr Colin Johnston, Flat 1/1, 4 Maitland Street, Helensburgh, G84 7PB (“the Respondent”)

Tribunal Members:

David Preston (Legal Member) and Eileen Shand (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction by granted in favour of the Applicants.

1. By application dated 8 July 2019 the Applicants applied to the First-tier Tribunal under Rule 66 of the First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The application was accompanied by:
 - Short Assured Tenancy Agreement dated 3 and 4 May 2016;
 - Form AT5 dated 3 May 2016;
 - Notice to Quit and section 33 Notice dated 7 February 2022;
 - Royal Mail Proof of Delivery dated 8 February 2022;
 - Notice to Local Authority under section 11 of the Homeless etc (Scotland) Act 2004;
 - Rent Statement to 9 February 2023;
 - email from Clyde Property, Estate Agents dated 10 October 2022; and
 - Print of Title DMB12189.

2. By Decision dated 14 November 2022, a Convener of HPC having delegated power for the purpose, referred the application under rule 9 of the Rules to the tribunal. A letter of Intimation dated 20 December 2022, with Notice of the Case Management Discussion (CMD) to be held on 16 February 2023 by teleconference, together with a full set of case papers, was served on the tenant by Sheriff Officers on 21 December 2022.
3. Mr McKeown appeared on behalf of the applicants. The respondent attended on his own behalf.

Case Management Discussion

4. The convener outlined the purpose of the CMD and explained that the intention was to identify any points in dispute and, if necessary, continue the matter to a full hearing at which evidence will require to be led.

Respondent's Position

5. The respondent advised that he had been unable to work for the past 18 months, since July 2021, due to an illness which had suddenly come upon him at work and affected his neck and effectively disabled him. He said that he had been diagnosed by a neurologist with a Cervicogenic headache which results from problems with bones in the back of his neck. This is recurrent with dizzy spells and headaches which he finds debilitating. He explained that he had been working for Cameron House when the injury came on when he had been stacking supplies in the cellar. He had made an unsuccessful attempt to return to work. He was unable to drive as he lacked confidence on the roads. He experiences dizzy turns and severe headaches.
6. The respondent lives alone and is aged 62. He has applied for and failed to obtain any benefits as he is in receipt of a pension of £917 per month from the Ministry of Defence, having served in the Navy.
7. The respondent explained that he had been in receipt of statutory sick pay which had allowed him to maintain payments of monthly rent up until June 2022 when this had terminated.
8. The respondent said that since he received the Notice to Quit, he had been in contact with CAB, the local authority, veterans housing organisations and the Beild Housing who might be in position to assist him with alternative accommodation, but none were prepared to do anything until they had been advised of the outcome of this application.
9. The respondent advised that he did not like to be in this position which is something that he had not previously experienced, and he said that he would be prepared to cover the arrears of rent but simply was unable to do so as his pension merely covered his food mobile phone and internet costs. He was also struggling to pay his gas and electricity bills. He advised that he had been in touch with MacArthur Stanton, the letting agents, about the situation since he had received the Notice to Quit.

10. The respondent referred to a letter which he had received from CAB and which he had attempted to send to the tribunal administration without success. He read the letter which indicated that Beild Housing may have two suitable properties in Helensburgh, but they were not able to confirm when or if they could be made available.

Applicant's Position

11. Mr McKeown did not contest the respondent's position and confirmed that he did not oppose the contents of the letter from CAB. He advised that the applicants were sympathetic with the respondent's position but explained that they had received no rent from the property since June 2022. There still remained a mortgage over the property, payments for which they required to maintain. He explained that they required to sell the property in view of the change of circumstances which had arisen following Mrs Faulks' retirement. He said that Mr Faulks had lost his job in December. The respondent said that he had been told that Mr Faulks had been made redundant and had not just lost his job.

12. Mr McKeown advised that the applicants had owned two letting properties one of which they had been able to sell in December 2022 as they wish to move out of the letting business.

Reasons for Decision

13. Both parties wanted the application to be determined today. The applicants wanted to proceed with the sale of the property and the respondent wanted the order to be determined either to allow him to remain or allow his housing applications to proceed. There was no dispute as to the facts presented by either party and the tribunal was required to exercise its judgement as to whether it is reasonable for an order to be granted.

14. The tribunal was satisfied that the short assured tenancy had been duly terminated by service of Notice under section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") and a valid Notice to Quit dated 7 February 2022 requiring vacant possession of the property no later than 4 September 2022, being 6 months' notice as required by the amendments made to the 1988 Act by the Coronavirus (Scotland) Act 2020 ("the 2020 Act"). The application to the tribunal was dated 10 October 2022.

15. Before granting any order for eviction, the 2020 Act requires the tribunal to be satisfied that to do so is reasonable in all the circumstances. In coming to a determination, the tribunal considered the following:

- a. The applicants intended to sell the property due to a change in circumstances occasioned by the retiral of the second named applicant. They had owned two letting properties and had been able to sell the other one in December 2022 but needed to continue to recover possession of the property for it to be sold as well, as evidenced by the email from Clyde Property dated 10 October 2022. In addition, and since the making of the

application, the first named applicant was no longer in employment after December 2022 either as a result of redundancy or having lost his job. The tribunal considered that the reason for him to be no longer working was immaterial, whether he received a redundancy payment or not. As a result of not working, the applicants' income would have reduced.

- b. The applicants had received no rental payments from the respondent since June 2022 as evidenced by the updated rent statement submitted to the tribunal on 10 February 2023. The respondent was unable to be certain as to when he stopped paying rent but accepted that the arrears had accrued. Until the property is sold, the mortgage payments will require to be paid monthly despite no income from the property.
 - c. The respondent had suffered an illness while at work in or about July 2021 and had been diagnosed with a Cervicogenic headache as a result of problems with bones in the back of his neck. He experiences dizzy turns and severe headaches and as a result has been unable to work since the onset, although he had attempted to return to work with his former employers but was unable to sustain it. He does not feel confident to drive.
 - d. The respondent had been receiving statutory sick pay until June 2022 which had been sufficient to cover the rent but when it stopped his income consisted of his MoD pension of £917 per month which covered his food, telephone and internet costs. He was unable to pay anything towards the rent, although said that he wanted to maintain the payments and clear the arrears if he could. He sympathised with the applicants' position but was unable to do anything about it. He had applied for benefits but was ineligible for any payments due to his pension.
 - e. The respondent had made contact with CAB, the local authority, Beild Housing, and other veterans' associations about re-housing without any success, although they had told him that they would await the outcome of the eviction process before progressing his application. He had been advised by CAB that they had ascertained that Beild Housing might have 2 suitable properties in Helensburgh, but there was no certainty, either as to availability or eligibility. They had suggested that any eviction order might be suspended for an unspecified period to allow this to be explored further.
16. The tribunal sought to balance the circumstances of the parties in order to determine whether it was reasonable to grant an order. The applicants were unable to move on from their current position unless the order is granted and continued to make mortgage payments without any income from the property. However, although the respondent had no certainty of re-housing, there appeared to the tribunal to be a reasonable prospect of that coming about, either through the local authority or another source.
17. On that basis and on balance the tribunal exercised its judgement and concluded that the granting of an eviction order was reasonable.

18. The tribunal did not accept the suggestion of suspending the order since there was no suggestion of how long a suspension should be and no guarantee that the situation would have changed in any way at the end of the suspension.

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.

David Preston

16 February 2023