



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

Chamber Ref: FTS/HPC/EV/22/1358

**Re: Property at Glendarcey House, 2 The Queens Crescent, Gleneagles, Perth
and Kinross, PH3 1QL (“the Property”)**

Parties:

**Mr George Russell, Mrs Elizabeth Russell, Leslie Park, Headswood, Denny, FK6
6BW (“the Applicants”)**

**Mr Eddie McKenna, Mrs Diana McKenna, Glendarcey House, 2 The Queens
Crescent, Gleneagles, Perth and Kinross, PH3 1QL (“the Respondents”)**

Tribunal Members:

Richard Mill (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an eviction order be granted against the respondents**

Introduction

1. This is an eviction application is under rule 66 and section 33 of the Housing (Scotland) Act 1988.
2. There were two case management discussions in this matter. The first took place on 6 September 2022. No evidence of service of an AT5 upon the respondents in advance of the tenancy commencing had been produced. The respondents were willing to vacate but were awaiting their new build home being completed. The second CMD took place on 1 November 2022. By that time copies of AT5s, signed by both respondents had been produced. The respondents had not yet secured a clear date for completion of their new build home. A hearing on reasonableness was assigned.
3. In advance of the hearing, the tribunal issued a Direction requiring both parties to lodge affidavit evidence setting out their position and the reasonableness of an eviction order being made. The respondents were additionally required to

lodge documentary evidence showing the availability of their new home and the date of entry.

4. The hearing on reasonableness took place by teleconference on 9 February 2023. The applicants joined the hearing personally and were represented by Ms Jane McNicol of McNabs Solicitors. The respondents also joined the hearing personally and were represented by Mr David Hutchison of Dallas McMillan Solicitors.
5. The tribunal's direction regarding the production of affidavit and other evidence had been fully complied with by both parties. The circumstances surrounding the history of the tenancy and the current intentions of both parties were well set out. The tribunal initially used its inquisitorial function to ask a number of questions of both parties for clarification. Both parties representatives were thereafter afforded the opportunity of both cross-examining the other party and re-examining their own client. Both parties representatives were invited to make oral submissions. The tribunal reserved its decision.

Findings and Reasons

6. The property is Glendarcey House, 2 The Queens Crescent, Gleneagles PH3 1QL. It is a modern, five bedroom, 9,000 square foot detached two storey property on an exclusive residential development within Gleneagles Village.
7. The applicants are Mr George Russell and Mrs Elizabeth Russell. They are the heritable proprietors and registered landlords of the property. The respondents are Mr Eddie McKenna and Mrs Diana McKenna who are the tenants.
8. The parties entered into a short assured tenancy which commenced on 11 October 2012. The necessary AT5 statutory notices were timeously served. Monthly rent was stipulated at a rate of £3,000 per month. A deposit in the sum of £3,000 was paid at the commencement of the tenancy. The rent has never been increased.
9. The relevant notice period at the time that the Notice to Quit was served was one of 6 months. On 29 October 2021 the applicants served upon the respondent a Notice to Quit. The applicants gave notice to the respondents that they would require to remove from the property on or before 11 May 2022. Further, on 29 October 2021 the applicants also served upon the respondents Notice under Section 33(1)(d) of the Housing (Scotland) Act 1988 stating that possession was required of the property as at 11 May 2022. The Notice to Leave was valid and is evidenced to have been served timeously.
10. The short assured tenancy between the parties reached its end as at 11 May 2022. Tacit relocation is not operating. No further contractual tenancy is in existence. The applicants have complied with the terms of Section 33(1)(d) of the Housing (Scotland) Act 1988. The applicants have complied with the legal requirements to recover possession of the property which was let subject to a short assured tenancy.

11. All eviction grounds are now discretionary. The tribunal proceeded to consider the issue of reasonableness taking into account all documentary and oral evidence having carefully considered the submissions made on behalf of both parties.
12. The applicants seek to recover possession of the property in order that they can sell it. There is no suggestion that the respondents have failed to adhere to their obligations in terms of the tenancy arrangement.
13. The applicants always had the intention of selling the property. Their initial purchase of the property was one which arose through unintended circumstances. The first applicant is the retired Director of George Russell (Construction) Limited. The Company bought the plot at 2 Queens Crescent, Gleneagles with a view to developing the house for sale. Once built, the impact of the financial crisis of 2008 impacted the value and due to other cashflow issues the applicants personally bought the let property from the Company, then being run by their son. The applicants have never lived in the property.
14. The applicants' personal circumstances have changed over recent times. The first applicant was diagnosed with cancer in 2021 and following treatment is now in remission though continues to be regularly monitored. Recent test results have revealed an increase in his cancer score. The applicants did have three rental properties, including the let property which is the subject of this action and they have already sold one and intend to sell them all. The current value of the let property, as per a Home Report obtained in 2022, is approximately £2.2 million.
15. The applicants are very anxious regarding the first applicant's health. They have already had to wait 18 months from the time that the Notice to Quit was served. They wish to order their financial affairs and tax plan though their primary focus revolves around the first applicant's poor state of health.
16. The respondents are aged 61 and 57 years of age. They are both in good health and have no dependents. The first respondent is an electrical engineer on a self-employed basis and the second respondent is involved with that enterprise carrying out the administrative duties associated with his work. The respondents are not tied to the area of the let property for any purpose.
17. The respondents have now been in continual occupation of the property for a period of over 10 years, since October 2012. Throughout the subsistence of the tenancy, the respondents have adhered to all of their obligations, including paying their rent in full. They have paid around £370,000 in rent over that period. The level of rent has remained static during the whole tenancy.
18. The applicants wish to market the property for sale as soon as practicable. There are external redecoration and other works required first which will take a few weeks to complete. The respondents say they would comply with such works being undertaken with them occupying the property. Due to previous difficulties encountered by contractors employed by the applicants seeking

entry to the grounds the tribunal was not confident that such an arrangement would be workable.

19. The respondents are committed to vacating the property as soon as is possible but there remains a lack of certainty as to when they will do so. They have taken steps to purchase a newbuild property. This is on a development site operated by Globe Housing (Scotland) Limited in Houston, Renfrewshire. The respondents have paid the sum of £1,000 to reserve their plot and also paid a deposit of £3,000. Regrettably there have been delays with the housing development. The respondents plot will be the last to be built on the development and the most recent timescale specified on behalf of Globe is that the respondents new home will be available in 'late summer'. It is reasonably foreseeable that further delays may occur. No missives have yet been concluded for the purchase.
20. The respondents have acted in good faith but the Tribunal finds that they have delayed seeking alternative accommodation. They have not advanced all reasonable efforts to secure suitable alternative accommodation since the service of the Notice to Quit. They are a couple of means. It was their oral evidence that they have, and continue to, actively search out alternate property to rent on a very regular basis to live in pending entry to their new build home. Their position was that they do not require a large property to rent and have looked at properties between 700 to 2,600 square foot in a very broad geographical area but have not secured anything. The Tribunal found this incredible and in the alternative found that if the respondents were so minded that they could secure a short term let of a property which would meet their needs having regard to their resources.
21. The applicants have served a valid notice under Section 11 of the Homelessness etc. (Scotland) Act 2003. In the event of an eviction order being granted the local authority has an obligation to make alternative accommodation available for the respondents if necessary.
22. The respondents can secure alternative accommodation on a short-term basis pending their ability to take up occupation of their new home. This may require the storage of items of property which is a readily available option. The operation of the respondents business can be carried on from any location. Their stated position of it being unreasonable to have to move twice in quick succession is not the fault of the applicants. Their stated reasons for wishing to remain in the let property amounts to mere convenience for them. They do not require to remain in the let property.
23. In all of the circumstances, having weighed up the respective circumstances and resources of both parties, tribunal found that it was reasonable to make the eviction order sought.
24. The respondents cannot expect to live in the let property for as long as is convenient to them. They cannot specify a precise date by which they will remove themselves. Further unforeseen circumstances, possibly out with their own control, are likely to arise which means that they are unable to enter their

new home in August 2023. It would not be fair for the applicants to have to wait yet a further period, of at least 5 months. The applicants have a genuine reason to recover possession. A delay in this will make the applicants more anxious than they already are. That is simply unfair and unreasonable in all the circumstances.

25. The tribunal recognised that whilst reasonable to evict the respondents, for all the foregoing reasons, that the eviction order should be made on the condition that the order may not be enforced until 31 March 2023 at 12 noon. On the basis of all the facts as found the tribunal found that on cause shown the standard 30 day period for implementation ought to be extended by that period of some three weeks. This affords the respondents some additional time to make arrangements to secure alternative accommodation and remove from this sizeable property yet the marginal further delay will not be materially prejudicial to the applicants.

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.

R Mill

9 February 2023

Legal Member/Chair

Date