

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision 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/18/2578

Re: Property at The Cottage, Ladyurd, Blyth Bridge, West Linton (“the Property”)

Parties:

Mr John Wylie, The Steading, Netherurd Farm, Blyth Bridge, West Linton (“the Applicant”)

Ms Marion McKenzie, The Cottage, Ladyurd, Blyth Bridge, West Linton (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted and an Order for Possession should be made/

Background

By application, received by the Tribunal on 13 September 2018, the Applicant sought an Order for Possession of the Property under Section 18 of the Housing (Scotland) Act 1988 (“the 1988 Act”) and Ground 17 of Schedule 5 to the 1988 Act.

The Applicant stated that the Property had been purchased in 2016. The seller had been the landlord in a tenancy agreement with the Respondent. The tenancy had been granted to the Respondent in consequence of her employment by the previous owner. The Respondent was no longer employed by the previous owner or by the Applicant, but continued to reside in the Property.

The application was accompanied by copies of a tenancy agreement dated 29 August 1989, a Notice to Quit dated 6 July 2018, a Form AT6 Notice dated 4 July 2018, advising the Respondent that the Applicant required possession of the Property under Ground 17 of Schedule 5 to the 1988 Act, proof of service of both notices by sheriff officers on 6 July 2018 and a draft Service Occupancy Agreement

between the Applicant and a Mr Barry McMichael, indicating that the Applicant required the Property for occupancy by an employee.

The Case Management Discussion

A Case Management Discussion was held at The Town House, High Street, Dunbar on the morning of 20 November 2018. Ms Kirsty Black of Complete Clarity, solicitors, Shawlands, Glasgow appeared for the Applicant and also with the consent of the Respondent's agents, Gillespie Macandrew LLP, Edinburgh.

Ms Black advised the Tribunal that the agreed position between the Parties was that the Respondent was willing to consent to an Order for Possession being made, provided it could not be enforced earlier than 18 December 2018. She provided the Tribunal with copies of e-mail exchanges with the Respondent's agents, confirming the Respondent's position.

Reasons for Decision

Ground 17 of Schedule 5 to the 1988 Act provides that it is a ground for possession that "The house was let to the tenant in consequence of his employment by the landlord seeking possession or a previous landlord under the tenancy and the tenant has ceased to be in in that employment". The Tribunal was satisfied from the evidence provided, namely the tenancy agreement and the Applicant's statement that the Respondent was no longer employed by the Applicant or the previous owner, which statement had not been contested by the Respondent, that the requirements of Ground 17 had been met.

The Tribunal may not make an Order for Possession under Ground 17 of Schedule 5 to the 1988 Act unless it considers it reasonable to do so. The Tribunal was satisfied by the draft Service Occupancy Agreement that the Property was required by the Applicant for occupation by an employee of the Applicant and that it was, therefore, reasonable to grant the Order.

The Tribunal was satisfied that the Form AT6 Notice and Notice to Quit had both been validly served on the Applicant.

The Tribunal noted the agreed position between the parties that the Order should not be enforceable before 18 December 2018, but this was a moot point, as an Order for Possession made by the Tribunal cannot be enforced until the period allowed for an application for permission to appeal its Decision has expired and this period would not expire until 21 December 2018.

Decision

The Tribunal decided to grant the application and to make an Order for Possession of the Property.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

Mr George Clark

Legal member/Chair

20 November 2018

Date