



**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/24/3629

Re: Property at 75 Glen Nevis, East Kilbride, G74 2BJ (“the Property”)

Parties:

**Yvonne Trainer and David Trainer, both 205 Mallard Crescent,, East Kilbride,
G75 8UJ (“the Applicants”)**

Caroline MacPhee, 75 Glen Nevis, East Kilbride, G74 2BJ (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Tony Cain (Ordinary 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 decided without a Hearing
and granted an Order for Possession of the Property.**

Background

1. By application, dated 8 August 2024, the Applicants sought an Order for Possession of the Property under Section 18 of the Housing (Scotland) Act 1988 (“the Act”). The Ground relied on was Ground 1 of Part 1 of Schedule 5 to the Act, namely that the second-named Applicant requires the Property as his only or principal home.
2. The application was accompanied by a copy of an Assured Tenancy Agreement between the Parties for a fixed period from 1 July 2009 to 1 January 2010, and a Form AT6 Notice dated 7 May 2024, advising the Respondent that the Applicants intended to raise proceedings for possession under Ground 1 of Schedule 5 to the Act and that proceedings would not be raised before 9 July 2024. The Applicants also each provided an Affidavit dated 5 August 2024, in which they confirmed that they had separated as a couple and that the First-named Applicant would be staying in the house they presently shared and the Second-named Applicant required the Property as his only or principal home,

as an alternative to having to pay the mortgage on the Property as well as rent for another house. It is a two-bedroom flat, so there is room for the Applicants' children, aged 16 and 10, to stay with the Second-named Applicant.

3. On 27 January 2025, 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 17 February 2025. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

4. A Case Management Discussion was held by means of a telephone conference call on the morning of 6 March 2025. The Applicants were represented by Miss Alexandra Wooley, of Bannatyne Kirkwood France & Co, solicitors, Glasgow. The Respondent was not present or represented.
5. Miss Wooley advised the Tribunal that the Applicants had not taken legal advice and had not involved letting agents when the tenancy was created. They had not known of the requirement to serve notice and had, therefore, not realised the possible consequences of failing to do so. They were letting out the Property to help a friend. They were living in London at the time and had used the Property as a base when returning to Scotland to visit friends and family. She understood that the Respondent was in employment a year ago, but had no updated information, as the relationship between the First-named Applicant and the Respondent had deteriorated since then. The Respondent has an adult child who, to the best of the Applicants' knowledge, does not live with her and, again so far as the Applicants are aware, the Respondent has no health issues or vulnerabilities that would require special consideration in relation to her being rehoused. Miss Wooley added that, since the date of the application, an issue regarding rent arrears has arisen, with no rent having been paid for 7 months. If the Tribunal did not make an Order for Possession, the Applicants would have very few options in relation to recovering possession to allow the Second-named Applicant to reside in the Property.

Reasons for Decision

6. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 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 was satisfied that it had before it sufficient information and documentation to enable it to decide the application without a Hearing.
7. Section 18(1) of the Act states that the Tribunal shall not make an Order for Possession of a house let on an Assured Tenancy except on one or more of the Grounds set out in Schedule 5 to the Act. By Section 18(4) of the Act, if the Tribunal is satisfied that any of the Grounds in Part I or II of Schedule 5 is established, the Tribunal shall not make an Order for Possession unless it considers it reasonable to do so.

8. The relevant portions of Ground 1 of Part I of Schedule 5 to the Act provide that the Tribunal must grant an Order for Possession if, not later than the beginning of the tenancy, the landlord gave notice in writing to the tenant that possession might be recovered on this Ground or the Tribunal is of the opinion that it is reasonable to dispense with the requirement of notice and the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them requires the house as his or his spouse's or civil partner's only or principal home, and the Tribunal is satisfied that it is reasonable to grant the Order.
9. The Tribunal decided that, in the circumstances, it was reasonable to dispense with the requirement to give notice not later than the beginning of the tenancy that possession might be recovered under Ground 1. Ignorance of the law was no excuse, but the circumstances were unusual in that they were living in London at the time, they let the Property to a friend to help her out and they had not envisaged at the time that either of them would require it as his or her only or principal home.
10. The Tribunal was satisfied that the Second-named Applicant requires the Property as his only or principal home, so the only matter for the Tribunal to consider was whether it would be reasonable to make an Order for Possession.
11. Having carefully considered all the evidence before it, the Tribunal decided on balance that it would be reasonable to grant an Order for Possession of the Property. In arriving at its Decision, the Tribunal took into account the circumstances of the Applicants and the information provided in relation to the Respondent and noted, in particular, that the Respondent had not made any written representations to the Tribunal and had chosen not to attend or to be represented at the Case Management Discussion, so did not appear to be contesting the application.
12. The Decision of the Tribunal was unanimous.

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

6 March 2025
Date

