



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

Chamber Ref: FTS/HPC/EV/22/1154

Re: Property at 175 Crown Street, First Floor Right, Aberdeen, AB11 6JA (“the Property”)

Parties:

Mr Alan Douglas, 47 Loughborough Road, Kirkcaldy, KY1 3BZ (“the Applicant”)

Mr Ross Oliver, 175 Crown Street, First Floor Right, Aberdeen, AB11 6JA (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Sandra Brydon (Ordinary Member)

Decision in absence of Respondent

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order against the Respondent in favour of the Applicant

Background

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under section 33 of the Housing (Scotland) Act 1988. In support of the application the Applicant provided the following documentation:-
 - (i) Short Assured Tenancy Agreement between the parties together with Form AT5.
 - (ii) Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988 both dated 23 September 2021 together with proof of delivery by Sheriff Officers;
 - (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Aberdeen City Council with proof of service.

- (iv) Copy email from Applicant's agent to Respondent.

- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was assigned for the 7 December 2022 to take place by teleconference due to the restrictions imposed by the Covid-19 pandemic. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondents by Sheriff Officers. No written representations were received from the Respondents in response to service of the application paperwork.

Case Management Discussion

- 3 The Case Management Discussion took place by teleconference on 7 December 2022. The Applicant was present and represented by Lisa Campbell of Stonehouse Lettings. The Respondent was not in attendance.

- 4 Ms Campbell addressed the Tribunal. She advised that a section 33 notice had been served on the Respondent following advice from the Scottish Association of Landlords ("SAL") and Association of Registered Letting Agents ("ARLA"). In 2020 the Applicant had run into difficulties getting in contact with the Respondent. His agent was trying to arrange the gas safety inspection and legionella test. The Respondent did not respond to attempts at contact. The agent did not have keys since the Respondent had borrowed these and not returned them. The Applicant did apply to the Tribunal at that point for a right of entry in March 2021. Occasionally the Respondent would get in touch, but the agent would attend the property and could not gain access. The right of entry was unsuccessful as the Respondent would not engage. The Applicant was advised by SAL and ARLA that a right of entry warrant would have a similar success rate. Having taken advice from SAL and ARLA the Applicant decided to seek repossession. A notice to quit and section 33 notice were served in September 2021 with an effective date of 31 March 2022. Ms Campbell's predecessor had attended the property at the start of April 2022 but received no answer albeit a light was on. Neighbours advised that the Respondent was still living there. The Applicant therefore lodged the application with the Tribunal.

- 5 Ms Campbell advised that since then the agent had been contacted by a social worker from the Council in September 2022. She advised that the Respondent had been suffering from mental health issues and had been in hospital for a period of time. He had returned home in October 2022 and the social worker advised at that point that he would be able to deal with the situation as he was in a much better place. Ms Campbell advised that her agency took mental health issues very seriously and didn't want to make the situation worse however the social worker advised that it would be okay to proceed with the application. The social worker was assisting the Respondent in obtaining alternative accommodation.

- 6 Ms Campbell confirmed that the Respondent had also stopped paying his rent and had accrued nine months arrears in the sum of £4165. He was believed to live alone although there was a suggestion that he had a partner at one point who was never on the lease. In response to questions from the Tribunal Ms Campbell confirmed that the gas safety was two years overdue. They had considered isolating the gas but would require to get access to the property to do that. The Applicant highlighted the gas safety issues, pointing out that there were six properties in the building which could be affected if something went wrong.

Relevant Legislation

- 7 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Housing (Scotland) Act 1988, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

33 Recovery of possession on termination of a short assured tenancy.

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied—

(a) that the short assured tenancy has reached its finish;

b) that tacit relocation is not operating; and

(c)

(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and

(e) that it is reasonable to make an order for possession.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than six months, that period;

(ii) in any other case, six months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.

Findings in Fact and Law

- 8 The Applicant entered into a Short Assured Tenancy Agreement with the Respondents which commenced on 31 July 2017 for a period until 31 July 2018 and monthly thereafter.
- 9 The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 10 On 28 September 2021 the Applicant delivered a Notice under section 33 of the Housing (Scotland) Act stating that the Applicant required the property back by 6 February 2022 and a Notice to Quit to the Respondent which sought to terminate the tenancy as at that date. The Notice to Quit was in the prescribed form. The Notices were served by Sheriff Officers.
- 11 The Notice to Quit terminates the tenancy as at 31 March 2022 which is a valid ish date.
- 12 The Respondent has repeatedly failed to allow access to the property for routine inspections, including gas safety and legionella.
- 13 The Respondent is in breach of the terms of the said tenancy agreement by virtue of his failure to allow access.
- 14 The gas safety inspection has been outstanding for two years.
- 15 The property is located within a block of six flats.
- 16 The Applicant has made efforts to gain access to the property by applying to the Tribunal for right of entry.
- 17 The Respondent has mental health issues and receives support from a social worker.
- 18 The Respondent is receiving assistance from his social worker in obtaining alternative accommodation.
- 19 The Respondent has accrued rent arrears in the sum of £4165 as a result of his failure to pay rent for nine months.
- 20 It is reasonable to make the order sought by the Applicant.

21 The provisions of section 33 of the Housing (Scotland) Act 1988 have been met.

Reasons for Decision

22 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved. The Respondent had been given the opportunity to attend the Case Management Discussion and had chosen not to do so. The Tribunal noted that his social worker was also aware of the proceedings.

23 The Tribunal was satisfied that the Respondent had been served with a valid Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988. The issue for the Tribunal to determine therefore was whether it was reasonable in all the circumstances to grant an eviction order.

24 Gas safety is a fundamental element of a tenancy, ensuring the protection of tenants and those around them. By preventing the Applicant from carrying out this task the Respondent was putting not only himself but others in the building at risk. The Tribunal accepted that efforts had been made by the Applicant to gain access to the property, by way of a previous application to the Tribunal for right of entry. However this had ultimately been unsuccessful. The Respondent had a duty under the terms of the tenancy agreement to allow access upon reasonable notice which had been given repeatedly in this case. He had however repeatedly failed to engage with the Applicant and his agent. Given the importance of gas safety this represented a serious breach of the terms of the tenancy agreement.

25 The Tribunal did have concerns regarding the Respondent's vulnerability in terms of his recent mental health issues, however it noted that he had support from a social worker who was assisting him with finding alternative accommodation. The advice from the social worker was that he was much improved and able to deal with the ongoing tenancy situation. The Tribunal further noted the lack of dependents residing at the property. Whilst the rent arrears had not been the original reason for the lodging of the application the Tribunal considered them to be material to the reasonableness of making the order. The Respondent had failed to pay rent for nine months and therefore a considerable balance of arrears had accrued which were impacting upon the Applicant.

26 Accordingly balancing the Respondent's repeated breaches of his tenancy obligations in terms of access and the significant balance of rent arrears with the Respondent's personal circumstances the Tribunal ultimately concluded that it would be reasonable to make the order.

27 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.

Ruth O'Hare

7 December 2022

Legal Member: Ruth O'Hare

Date