



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/22/3112

Re: Property at 18 Fleming Crescent, Saltcoats, KA21 6EF (“the Property”)

Parties:

Mr Patrick Conlan, Mrs Karen Conlan, 7 Munnoch Crescent, Ardrossan, KA22 7PW (“the Applicant”)

Ms Marie Gallacher, 18 Fleming Road, Saltcoats, KA21 6EF (“the Respondent”)

Tribunal Members:

Jan Todd (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 be granted

- **Background**

1. This was a case management discussion to consider the application made by the Applicants dated 30th August 2022 for an order for repossession of the Property in terms of Rule 66 of the Tribunal Rules. The CMD took place by teleconference.
2. The Applicants are the Landlords in a Short Assured Tenancy with the Respondent who is the tenant. The Applicant has title and interest by virtue of owning the property.
3. The Applicant’s representative Ms Meaghan McDiarmid attended on the teleconference for the Applicants. The Respondent was served the application and papers on 11th November 2022 she did not attend on the call but was represented by Mr Alister Meek of Chap.
4. The Applicant had lodged and the Tribunal had sight of and considered the following documents:-
 - a. Application for repossession dated 30th August 2022

- b. Copy Tenancy Agreement for the Property dated 16th October 2017
 - c. Copy AT5 Notice dated 16th October.
 - d. Notice to Quit dated 18th January 2022 giving notice to leave by 16th August 2022
 - e. S33 Notice dated 18th January 2022 giving notice to remove by 16th August 2022
 - f. Royal Mail Track and trace receipt dated 19th January 2022
 - g. S11 notice to North Ayrshire Council
5. The Tribunal sent a direction to the Applicant and Respondent inviting their views on whether it may be reasonable or not for the eviction to be granted. In response the Applicants lodged a copy of an estate agency service agreement with Taylor Henderson to market a property dated 15th November 2022.

The Discussion

6. The Legal Member invited everyone to introduce themselves and explained the purpose and order of the proceedings today and invited the Applicant to explain what they were seeking and why.
7. Ms McDiarmid explained that the Applicants were seeking an order for possession today. She advised that the appropriate notices were served on the Respondent at the beginning of this year and that this is their only property that they rent out and now their mortgage payments exceed the rental payments. Under questions she confirmed the applicants' mortgage had increased before the notices were served and that they had not sought to increase the rent due as the tenant would not have been entitled to any more benefits. Ms McDiarmid confirmed that the estate agent contract was in respect of this Property although there is no reference to the address on the agreement.
8. The Respondent's representative Mr Meek explained that the Respondent was not opposing the application and he was assisting her in liaising with the Council to obtain suitable accommodation for her and her children. He advised that the council would not treat her as a priority until an order for eviction was granted. He confirmed that the Respondent had 2 dependent and one non dependent children living at the property but there were no health issues.

Findings in Fact

9. The Applicant and Respondent entered into a short assured tenancy of the Property for a period of 6 months from 16th October 2017 to 16th April 2018 and monthly thereafter if not terminated.
10. The Applicants are the Landlords and served a Form AT5 on the Respondent who is the Tenant prior to the creation of the tenancy.
11. The Tenancy is a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988.
12. The Applicant has served a Notice to quit dated 18th January 2022 terminating the contractual tenancy on 16th August 2022

13. A S33 notice was served on the Respondent giving 6 months' notice that they required possession of the Property by 16th August 2022.
14. This is the only buy to let property the Applicant has, they now wish to sell the property as it is not financially viable to rent out.
15. The Respondent who is the tenant has not vacated the property, but is waiting on an offer of housing from the Council.
16. A s11 notice in terms of the Homelessness etc. (Scotland) Act 2003 was served on the Local Authority.
17. The Tribunal finds it reasonable that an order for eviction be granted.

Reasons for Decision

18. The Applicants entered into a Short Assured Tenancy with the Respondent which commenced on 16th October 2017. The original term of the tenancy was 6 months and ended on 16th April 2018 and then continued on a monthly basis until ended by either party. An AT5 form was served prior to the commencement of the tenancy. The Applicant has served a notice to quit terminating the tenancy on an ish or termination date namely 16th August 2022. She has also given notice of her intention to require possession in terms of S33 of the Act. Both notices were dated 18th January 2022 and delivered on 19th January 2022.
19. S33 of the Act says "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 for Scotland may make an order for possession of the house if it is satisfied-
 - a) That the short assured tenancy has reached its ish
 - b) That tacit relocation is not operating
 - c) That no further contractual tenancy is for the time being in existence and
 - 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.

The period of notice required to be given under S33 (1) (d) when served in January 2022 was six months, in accordance with the legislation as amended. 6 months' notice has been given.

20. The Short Assured tenancy has reached its ish, tacit relocation is not operating and there is no further contractual tenancy in existence, so the Applicant having given adequate notice in terms of S33 above, can and has applied to repossess the Property. However since April 2020 and Section 2 and Schedule 1 of the Coronavirus (Scotland) Act 2020, there has been a change to the law on repossessions and before an order for possession is granted the Tribunal has to be satisfied that it is reasonable to grant the order.
21. The Tribunal is able to make any order at a case management discussion as it can after a Hearing. The Tribunal considered carefully the submissions from both parties and the written evidence it had before it.
22. The Tribunal is satisfied the appropriate notices have been served bringing the contractual tenancy to an end and giving notice under S33 as well as notice to the local authority.

23. The Applicant has served the relevant notices over 10 months ago and Ms McDiarmid advised the Applicant's mortgage payments now exceed the rent that is payable and the Applicants wish to sell the property to stop their financial losses. A letter of engagement with estate agents has been lodged. The Respondent's representative indicated that the Respondent is not opposing the eviction application, that she has been in contact with the council about rehousing but will not be given priority until an order of eviction is granted. The Tribunal balancing the interests of both parties, finds it is reasonable to grant an order for repossession at this CMD and that a hearing is not required.

- **Decision**

An order for repossession was granted.

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.

Jan Todd

Legal Member/Chair

12th December 2022
Date