



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 Housing (Scotland) Act 1988 (“the 1988 Act”)

Chamber Ref: FTS/HPC/EV/22/2784

Property at 56-3 Strathleven Place, Dumbarton, West Dunbartonshire, G82 1BA (“the Property”)

Parties:

Mr Andrew Robertson, 6 Westmost Close, Edinburgh, EH6 4TE (“the Applicant”)

Mr David Sheridan, 56-3 Strathleven Place, Dumbarton, West Dunbartonshire, G82 1BA (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondent in favour of the Applicant.

Background

- 1. The Applicant seeks an order for possession of the property in terms of Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). A short assured tenancy agreement, AT5 notice, Notice to Quit, Section 33 Notice, Sheriff Officer certificate of service and Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 were lodged in support of the application.**
- 2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 6 February 2023 at 10am and that they were required to participate. Both were provided with a telephone number and passcode. Prior to the CMD the Applicant lodged a rent statement and written submissions.**

3. The CMD took place by telephone conference call on 6 February 2023 at 10am. The Applicant was represented by Mr Gardiner, solicitor. The Respondent did not participate and was not represented.

Case Management discussion

4. Mr Gardiner told the Tribunal that the Respondent remains in occupation of the property and that there has been no contact from him since the application was lodged. The Respondent contacted the Applicant following service of a charge for payment in connection with a related payment application. He stated that he was unable to pay the arrears. He had previously made a repayment arrangement in 2021. Two payments of £570 were received in November and December 2021 (£370 to cover the rent charge and the remainder toward the arrears). No further payments have been made to the rent account. Mr Gardiner referred the Tribunal to the rent statement which shows a current balance outstanding of £6630.
5. In response to questions from the Tribunal, Mr Gardiner said that the Respondent is understood to be unemployed. He lives at the property alone. It is not known whether he is in receipt of benefits and no payments have been made to the rent account from universal credit or housing benefit. Although not required in connection with proceedings under Section 33 of the 1988 Act, a pre action protocol letter was issued to the Respondent on 12 April 2022. It is not known whether he sought advice of assistance following receipt of the letter. He has stated in the past that he is on a priority housing list with the Local Authority. The Applicant is unaware of any health issues or disabilities.
6. Mr Gardiner advised the Tribunal that the Applicant made the decision to seek possession of the property because of the rent arrears as he relies on the rental income. Although a payment order was previously obtained, the Applicant has not recovered the sums due in terms of the order.

Findings in Fact

7. The Applicant is the owner and landlord of the property.
8. The Respondent is the tenant of the property in terms of a short assured tenancy agreement.
9. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondent on 27 April 2022.
10. The Respondent has been in arrears of rent since March 2021 and currently owes the sum of £6630 in unpaid rent.
11. The Respondent resides at the property alone.

Reasons for Decision

12. The application was submitted with a short assured tenancy agreement, and AT5 Notice. The initial term of the tenancy was six months from 13 January 2017 until 14 July 2017 with a provision that it continued on a month to month basis thereafter.
13. Section 32 of the 1988 Act states “(1) A short assured tenancy is an assured tenancy - (a) which is for a term of not less than 6 months; and (b) in respect of which a notice is served as mentioned in subsection (2) below. (2) The notice referred to in subsection (1)(b) above is on which – (a) is in such form as may be prescribed; (b) is served before the creation of the short assured tenancy; (c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under the tenancy; and (d) states that the assured tenancy to which it relates is to be a short assured tenancy.”
14. The Tribunal is satisfied that the tenancy agreement between the parties was for an initial term of 6 months and therefore meets the requirements of Section 32(1) of the 1988 Act. The Tribunal is also satisfied that AT5 Notice was given to the Respondent prior to the creation of the tenancy. In the circumstances, the Tribunal determines that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act.
15. From the documents submitted with the application, the Tribunal is satisfied that the Applicant served a Notice to Quit and Section 33 Notice on the Respondent on 27 April 2022. The Notice to Quit called upon the Respondent to vacate the property on 14 June 2022, an ish date. The Notice contains the information prescribed by the Assured tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and complies with the terms of Section 112 of the Rent (Scotland) Act 1984. The Tribunal is satisfied that the Notice to Quit is valid and that the tenancy contract has been terminated. The Section 33 Notice was also served on 26 February 2022 and gave the Respondents 2 months notice that the Landlord wished to recover possession of the property. A Section 11 Notice was submitted with the application, with evidence that it was sent to the Local Authority. The Applicant has therefore complied with Section 19A of the 1988 Act.
16. Section 33 of the 1988 Act, (as amended by the Coronavirus (Recovery and Reform) (Scotland) Act 2022) states “(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; (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” Subsection 2 states “The period of notice to be given under subsection (1)(d) above shall be – (1) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period; (ii) in any other case, two months”. The Tribunal is satisfied that the tenancy has reached its finish and, as the Applicant has served a valid Notice to Quit, that tacit relocation is not operating. A valid notice in terms of section 33(d) has also been served on the Respondent, giving at least two months’ notice that the Applicant required possession of the property.

17. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession, in terms of Section 33(e) of the 1988 Act.

18. The Tribunal noted the following: -

- (a) The Respondent did not participate in the CMD and did not lodge written representations. He did not provide the Tribunal with any information regarding his personal circumstances or the reasons for the arrears of rent.
- (b) The Respondent resides at the property alone and is understood to be unemployed.
- (c) The Respondent has incurred rent arrears of £6630 and has made no payments to the rent account since December 2021.
- (d) The Notices were served by the Applicant on the Respondent in April 2022 which means that he has had almost ten months’ notice that an order for possession might be granted.
- (e) The rent arrears have caused the Applicant financial difficulties.

19. The Tribunal is satisfied that the Applicant is entitled to seek an order for possession. In the circumstances, the Tribunal is also satisfied that it is reasonable that the order be granted.

Decision

20. The Tribunal determines that an order for possession of the property should be granted against the Respondent.

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.

Josephine Bonnar, Legal Member

6 February 2023