



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/22/2992

Re: Property at 145 Marmion Road, Cumbernauld, Glasgow, G67 4AW (“the Property”)

Parties:

Mr Paul Henderson, 6 McGlashan Gardens, Crieff, Perth and Kinross, PH7 3FF (“the Applicant”)

Mr Graeme Campbell, 145 Marmion Road, Cumbernauld, Glasgow, G67 4AW (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member) and Linda Reid (Ordinary Member)

Decision

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for the eviction of the Respondent from the property at 145 Marmion Road Cumbernauld Glasgow G67 4AW shall be made. The order for eviction shall not be enforced until after 12 noon on 31 January 2023.

2. This was a case management discussion (‘CMD’) in connection with an application for eviction on the expiry of a short assured tenancy agreement, in terms of rule 66 of the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017, (‘the rules’) and s33 of the Housing (Scotland) Act 1988 (‘the Act’). There was a second application before the tribunal in terms of rule 70 to recover rent arrears. The Applicant was represented by Ms Alexandra Wooley solicitor. The Respondent attended. The tribunal had before it the following copy documents:

- Application dated 22 August 2022.

- Short assured tenancy agreement dated 28 October 2014.
- Rent statement with arrears as at 28 July 2022.
- Rent statement with arrears as at 28 October 2022.
- Land certificate
- AT5
- Notice to quit dated 20 January 2022.
- S33 notice dated 20 January 2022.
- Proof of service of the notice to quit and s33 notice.

3. Preliminary matter

The tribunal noted that the AT5 was dated 28 April 2014 whereas the tenancy agreement was dated 28 October 2014. Clause 1.1 of the tenancy agreement referred to the AT5. The Respondent stated that he entered into an earlier tenancy agreement with the Applicant for a period of 6 months from 28 April 2014.

Discussion

The Applicant's position

4. The Applicant was seeking an order for eviction on the basis that the short assured tenancy agreement has reached its end. Ms Wooley submitted that there were substantial rent arrears which had accrued since 2020. She also submitted that rent arrears had also accrued between 2017 and 2019. In addition, she submitted that the Applicant wished to sell the property. The Applicant had intended to sell the property with the Respondent as a sitting tenant, but this had fallen through earlier this year due to the level of arrears. It was her submission that if an eviction order was granted this would expedite matters for the Respondent as the council would have a statutory duty to find him temporary accommodation. Ms Wooley submitted that the Applicant would be willing to have the enforcement of the eviction delayed for a few weeks to enable the Respondent to arrange alternative accommodation. If the Respondent was worried about the arrears, the granting of the eviction would give him some peace of mind as the obligation to pay rent would come to an end when the eviction was implemented.

The Respondent's position

5. The Respondent did not deny that there were substantial arrears in connection with the tenancy. He submitted he lost his job in December 2021 due to poor mental health and he applied for Universal Credit. In February 2022 he contacted the Applicant's letting agent to obtain a copy of his tenancy agreement as this was required for the housing element of his Universal Credit claim. It was his submission that the letting agent did not send a copy of the tenancy agreement until November 2022, despite several reminders. He started a new job in July 2022 and he has not pursued the housing element of his claim further. The Respondent received the notice to quit in January 2022 but he did not seek rehousing at that time as he thought the Applicant was planning to sell the property to someone who would

become his new landlord. The Respondent has not paid any rent since he recommenced employment in July 2022 as he was now seeking rehousing from the council. He was not aware of whether the eviction order would help his housing application or not. The Respondent was ambivalent about whether to oppose the eviction. On the one hand he did not have anywhere to move to at the moment, but he was hopeful the council would rehouse him in the future. He was worried about the arrears and was concerned if the eviction would be granted today he would need to move out immediately. On the other hand, the Respondent accepted that the Applicant wished to sell the property, there were substantial arrears, and the Respondent did not have any proposal to make in connection with the arrears. He declined the opportunity of a short adjournment to consider this. The Respondent was keen to move on to a new tenancy with the council. The Respondent did not oppose the eviction order on the basis that the enforcement of the order could be postponed until the end of January 2023.

4. Findings in fact

The Applicant is the owner of the property.

The parties entered into a short assured tenancy agreement commencing on 28 October 2014 for let of the property with a monthly rent of £395.

The agreement provided for interest on any arrears of rent at three percent above base rate.

Rent arrears began to accrue in February 2020.

The accrued arrears on 28 October 2022 were £4740.

The sum of £4740 remains outstanding.

The Applicant wishes to sell the property.

The Respondent has been served with a valid notice to quit and s33 notice.

The property has reached its ish.

Tacit relocation is not operating.

The Respondent remains in the property.

Reasons

5. The tribunal was satisfied that it had sufficient information before it to make a decision at the CMD. The tribunal was satisfied that the procedure had been fair. The tribunal considered the AT5 lodged. The AT5 was signed in advance of the tenancy agreement. The AT5 was signed in connection with an earlier agreement between the same parties and for the same property. The tribunal was satisfied that a short assured tenancy had been constituted. The tribunal was satisfied that a valid notice to quit and s33 notice had been served on the Respondent and the tenancy had reached its ish.

6. The tribunal also require to be satisfied that it is reasonable in all of the circumstances to grant the eviction. The tribunal noted that the arrears were substantial. Even if the Applicant's letting agent had failed to provide the Respondent with a copy of the tenancy agreement, arrears had accrued prior to the Respondent losing his job in December 2021 and since he started back work in July 2022.

Nothing had been paid towards the arrears since February 2022. It also appeared that the Applicant's attempts to sell the property with the Respondent as a sitting tenant had fallen through due to the level of arrears.

7. The Respondent was not opposing the eviction order. He had contacted the council to seek alternative accommodation and he had not applied his mind to reducing the rent arrears. The Respondent wished to move on to a new tenancy and was hopeful that this could be arranged by the end of January.

8. The tribunal considered the Respondent's submission regarding the rent arrears and the application for Universal Credit. He had not pursued this further and had not considered it the benefit could be backdated. Taking this evidence at its highest level, the tribunal was not satisfied that this was a material issue in connection with the rent arrears. Rent arrears had accrued from 2020 and had continued to accrue after the Respondent returned to full time employment. The tribunal also took into account that the Respondent was not opposed to the eviction order and if the enforcement of the order was delayed for a few weeks until the end of January 2023 he anticipated this would give him more time to obtain alternative housing. The Applicant was not opposed to a short extension. Accordingly the tribunal granted the eviction on the basis that it is reasonable to do so in all of the circumstances.

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.

Lesley Ward

8 December 2022

Legal Member

Date