



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/23/2942

Re: Property at 2 Burgess Street, Dundee, DD3 6RD (“the Property”)

Parties:

Kathryn Adamson, 13 Post Box Road, Birkhill, DD2 5PX (“the Applicant”)

Nicole Frances Reilly, 2 Burgess Street, Dundee, DD3 6RD (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a possession order be granted in term of section 33 of the Housing (Scotland) Act 1988 it being reasonable to grant such an order.

Background

1. This application for a possession order in terms of Rule 66 of the tribunal rules of procedure was first lodged with the tribunal on 28th August 2023 and accepted by the tribunal on 30th October 2023. A Case management discussion was fixed for the 26th of January 2024 at 10.00 am .

Case Management Discussion

2. The case management Discussion was attended by Mr Gardner of Easylets Ltd, agents for the Applicant along with Karen Thomson who was an observer from the same representative company. There was no appearance by or on behalf of the respondent Nicole Reilly. The Tribunal members has sight of an execution of service of the application, supporting papers and the date of the case management discussion on the Respondent, by Sheriff officers putting them through the letterbox at the

property on 28th November 2023. The Tribunal members were satisfied that the Respondent had received fair notice of the case management discussion and that it was appropriate to proceed in her absence.

3. The tribunal had sight of the application, the tenancy agreement, a Form AT5, a notice in terms of section 33 of the Housing (Scotland) Act 1988, a Notice to Quit a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 together with an email intimating this to Dundee City Council.

4. The parties had entered into a short assured tenancy in the property with effect from 4th of July 2014. The tenancy continued until the 31st of January 2015. Neither party had brought the tenancy to an end after that date and it appeared it had continued by way of tacit relocation on a six monthly basis after 31st January 2015.

5. A notice in terms of section 33 of the Housing (Scotland) Act 1988 dated 16th May 2023 had been hand delivered by the Applicant's agents to the Respondent on 16th May 2023 giving her notice that vacant possession of the property was required by the 31st of July 2023.

6. A Notice to Quit dated 16th May 2023 had been hand delivered by the Applicant's agents to the Respondent on 16th May 2023 indicating the vacant possession of the property was required no later than the 31st of July 2023.

7. A notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 in relation to this application had been emailed to Dundee City Council on the 28th of August 2023.

8. Mr Gardner advised the tribunal that there had been little recent contact with the Respondent. The last communication with her had been some 9-12 months before the case management discussion but there had been no response from her since then. She was regarded as a good tenant and had lived there a long time. There had been some issues with the tenancy. There were consistent low level rent arrears and he had noted that there have been 1820 days of rent arrears. The rent arrears amounted to £590 as of the date of the case management discussion but he said that with the payment of housing benefit that was due soon after that this figure would likely be reduced.

9. There had been some issues for the Applicant's agents in gaining access to the property to carry out outstanding certification and safety checks by contractors who had been turned away by the Respondent.

10. As far as the Respondent's circumstances were concerned it was believed she had a daughter who is older than primary school age. The property was a two-bedroom flat and there had been a number of problems with gaining access to the property and some consistent low level rent arrears. It was known that the Respondent had taken advice from Shelter as the Applicant's agents had been made aware of that. The Respondent was known to receive housing benefit but there was no other information known about her circumstances.

11. As far as the Applicant's circumstances are concerned the Applicant had previously had four rental properties but this is the only one left. It was understood that she was looking to sell this property eventually in order to realise the value of the property. In all the circumstances Mr Gardner submitted that was reasonable for the tribunal to grant the possession order.

12. The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

13. The parties entered into a short assured tenancy of property with effect from the 4th of July 2014.

14. This tenancy continued until the 31st of January 2015.

15. Neither party brought the tenancy to an end and the tenancy continued by way of tacit relocation on a six-monthly basis.

16. On 16th May 2023 the Applicant's agent hand delivered to the Respondent a notice in terms of section 33 of the Housing (Scotland) Act 1988 in proper form and giving appropriate notice to the Respondent that vacant possession of the property was required by 31st July 2023, an end date in respect of the tenancy.

17. On 16th May 2023 the Applicant's agent hand delivered to the Respondent a Notice to Quit in proper form giving appropriate notice to the Respondent that she was required to quit the property by 31st July 2023, an end date in respect of the tenancy.

18. The contractual tenancy has come to an end with effect from 31st July 2023.

19. There is no other contractual tenancy in operation and tacit relocation is not in operation.

20. A Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was sent to Dundee city council on 28th August 2023 in relation to this application.

21. The Respondent lives at the property with her secondary school age daughter.

22. The rented property is a two-bedroom flat.

23. The Applicant's agents have encountered issues with contractors accessing the property to carry out safety and certification checks as they have been turned away by the Respondent

24. There has been no recent communication by the Respondent with the Applicant's agents.

25. The Respondent is known to be in receipt of housing benefit which assists with payment of the rent

26. The rent has been slightly in arrears for a period of 1820 days at the time of case management discussion on 26th January 2024.

27. The Applicant landlord did have four rental properties but now rents out only this property.

28. It is understood that the Applicant ultimately wishes to sell the property once vacant in order to realise its value.

Reasons for Decision

29. The Tribunal was satisfied that the notices in this application were in proper form and that appropriate notice had been given to the Respondent of the action for possession and that the tenancy had been brought to an end.

30. As far as reasonableness is concerned the Tribunal followed the approach set out in *Barclay v Hannah*, 1947 SC 245 which indicates that the Tribunal is under a duty to consider the whole circumstances before it. In this application the Respondent had not attended to put forward her position but was known to live with her secondary school age daughter at the property. No other information was known of her circumstances other than that she receives housing benefit. The Tribunal weighed all the factors before it. There is no communication currently between the parties, the Respondent has refused entry to contractors and the rent is slightly in arrears and has been for over 1800 days. This is the last rental property which the Applicant has and she wishes to sell it once vacant to realise the value of the property. In all of the circumstances the Tribunal took the view that it is reasonable to grant the possession order.

Decision

The Tribunal determined that a possession order be granted in term of section 33 of the Housing (Scotland) Act 1988 it being reasonable to grant such an order.

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.



Legal Member/Chair

26.1.24
Date