



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/23/2906

Re: Property at 63 Burnfoot Road, Hawick, TD9 8EJ (“the Property”)

Parties:

Mr Scott Richardson, 92 McLagan Drive, Hawick, TD9 8BT (“the Applicant”)

Ms Ilona Brandwijk, 63 Burnfoot Road, Hawick, TD9 8EJ (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Leslie Forrest (Ordinary Member)

Decision (in absence of the Respondent)

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

- **Background**

1. This was a Hearing held to consider evidence with regard to the application made by the Applicant dated 24th August 2023 for an order for repossession of the Property in terms of Rule 66 of the Tribunal Rules.
2. The Applicant is the Landlord 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 had lodged and the Tribunal had sight and considered the following documents:-
 - a. Application for repossession dated 24th August 2023
 - b. Unsigned copy of the Tenancy Agreement for the Property with a date of commencement of 1st July 2015
 - c. Copy AT5 Notice dated 26th June 2015
Notice to Quit dated 13th June 2023 giving notice to leave by 1st August 2023

- d. S33 Notice dated 13th June 2023 giving notice to remove by 14th August 2022
 - e. Copy certificate of posting dated 13th June 2023
 - f. Royal Mail Track and trace receipt dated 14th June 2023
 - g. S11 notice to Scottish Borders Council
 - h. Email to Scottish Borders Council sending a copy of the s11 noticed
4. The Respondent sent in written representations and photographs dated 21st November 2023 which are referred to for their terms and were sent to the Applicant's representative.
 5. A Case management discussion took place by teleconference on 5th December 2023 after which the Tribunal issued a direction asking for various pieces of information and submissions from both parties. At the CMD the Applicant attended on the teleconference along with his solicitor Mr Steven Robertson. The Respondent was also on the call but was not represented. Both parties set out their position which is fully noted in the case management discussion note which is referred to for its terms.
 6. The Applicant advised that he had served the appropriate notices and was seeking an eviction under S33 of the 1988 Act. In particular he advised that he wished to sell the let property because the costs of the mortgage on the Property and his own home were both going up, his salary had gone down since moving jobs and he was finding being a landlord increasingly stressful. He also advised that the tenant had been keeping more than the 2 cats he had allowed at the start of the tenancy and the Property was not being kept in a good condition.
 7. The Respondent advised at the CMD that she was opposed to the application for eviction and wished to stay in the Property. She had lodged photographs of the garden at the house and indicated that she had hoped this would be her long term home; that she had chosen it rather than another one as she thought the landlord wished to use it as pension income and that would mean it would be a longer term property rental for her. Ideally she explained she wished to buy the Property as she was settled there and wished to continue living in a 3 bedroom property. She confirmed that she had spoken to the council since getting the eviction notices and understood that if she was offered housing from them she would only be entitled to a one bedroom property. The Respondent indicated she had carried out work on the garden and considered she had invested in the Property by doing so.
 8. Ideally the Respondent advised she wished to buy the Property from the applicant and advised that she had made some enquiries to try and buy it. She indicated she may need to borrow money from the bank, a friend and get a government loan but thought overall she could raise the money although she did advised that her health has meant she has lost her original job and this is why she is looking to set up an online business. She also indicated that her health has caused her serious issues which mean she feels she can't physically move house, she would get stressed and said her Doctor could provide further information.
 9. With regard to the number of cats the Respondent has, she confirmed that she had 2 cats originally and took in 2 rescue cats who turned out to be pregnant. The Respondent advised however that the kittens have left and been rehomed around last October and she advised she now has 4 cats.

10. The Applicant advised that he was open to discussing selling the Property to the Respondent.
11. The Tribunal noted that in view of the dispute between the parties the matter would require to proceed to a hearing and issued the following Direction to both parties:-

The Applicant is required to provide:

1. *Clarification of what date he believes the tenancy started and any supporting evidence of the start date of the tenancy.*
2. *Submissions on if and will it cause him financial hardship if the Property continues to be let or why it would be reasonable for an eviction order to be granted for financial reasons.*
3. *Evidence to show what his mortgages are, what other costs he incurs on a monthly basis and what his monthly income is.*
4. *Evidence of other financial commitments that he is obliged to make.*
5. *The Applicant is invited to provide any evidence showing he intends to sell the property such as any correspondence with an estate agent or solicitor regarding marketing the property, or evidence of a valuation.*
6. *Any submissions he wishes to make about the condition of the Property*
7. *To lodge any further submissions he wishes to make on the question of reasonableness.*
8. *A list of witnesses, including their name and phone number that they wish to bring if any to the hearing to be arranged.*
9. *To lodge any further written submissions, paginated and numbered along with an inventory of productions.*

The Respondent is required to provide:-

1. *The Respondent should advise what impact if any, any eviction, if it were to be granted, will have on her well-being and lifestyle.*
2. *The Respondent should provide any medical evidence she wishes to lodge in support of any health conditions and what impact an eviction would have on these if any. (The Respondent can show this to her GP to show this is required by the Tribunal).*
3. *The Respondent is invited to lodge any evidence to support the payment she made for the work done on the garden such as a receipt or copy bank transaction showing payment to the gardener for work done.*
4. *To provide any further submissions she wishes to make on the question of why she believes it would not be reasonable to grant an order of eviction.*
5. *A list of witnesses she wishes to bring, with their name and phone number, if any, to the hearing to be arranged.*
6. *To lodge any further written submissions paginated and numbered along with an inventory of productions.*

12. The Applicant's solicitor lodged an inventory of Productions consisting of 15 items on 15th February 2024 in response to the above direction.
13. On 13th March 2024 the Applicant's solicitor Mr Steven Robertson lodged written submissions on behalf of the applicant advising that he had planned on addressing the Tribunal in person at the hearing but due to personal reasons he

would not be able to attend the hearing and a colleague would be attending in his place.

14. There was no written response from the Respondent to the Direction.

The Hearing

15. The hearing was conducted by video conferencing. Both parties had been sent an invitation to test the conferencing system and completed this. The Applicant along with his solicitor Mr Rory Bannerman was in attendance at 10am but despite waiting a further 5 minutes there was no appearance by the Respondent. The Clerk advised that the Tribunal did not have a phone number for the Respondent. The Tribunal members also noted that they had received an email reminder to join the WebEx hearing 15 minutes before it was due to start, so noted the Respondent should have also received this. Given due notification of the hearing had been made to the Respondent and given there had been no request for a postponement the Tribunal proceeded in her absence and heard evidence from the Applicant.

16. The Applicant's solicitor Mr Bannerman explained that his client was seeking an order for possession and advised that he was relying on ground 33.

17. Mr Bannerman led evidence by asking the Applicant various questions and in particular asked the Applicant to confirm that he adopted both affidavits he had submitted dated 31st March 2023 and 14th February 2024. Mr Richardson confirmed that he adopted both affidavits as accurate. He confirmed that he was the landlord in the tenancy of the Property to the Respondent. He confirmed that he was not aware of why the Respondent was not present at the hearing today but advised he had not seen her since last year, although he was aware from passing the Property that she was still living there as lights were on at night and bins were taken out.

18. In response to the questions the Applicant confirmed that he wished to sell the Property for financial reasons and also because he no longer wished to be a landlord. He advised that the cost of the mortgage on the let property is about to increase significantly from the sum of £216.84 which he was currently paying as his fixed rate deal is coming to an end. He advised that he had spoken to his mortgage lender that morning and they advised that from 1st May 2024 his annual rate would be increased to 8.99% and that would be around £513 a month. He advised and this is confirmed in the applicant's affidavit, that he has a mortgage on his own residential home at 92 McLagan Drive Hawick, has also increased from a previous fixed rate of 1.79% to 5.03%. To try and keep his monthly outgoings on this mortgage the same the Applicant advised he has extended the length of the mortgage by another 5 years advising that this would cost him another £13,494.60 in payments.

19. The Applicant advised that overall his costs are increasing and his income and outgoings are listed in detail on item number 12 of his inventory of productions. Mr Bannerman referred to the schedule of income and outgoings which as lodged showed a credit each month of £260.12 and asked if this would change once the mortgage rate on the rental property increased on 1st May. Mr Richardson advised that it would change and become a net deficit. He advised that the mortgage

rate would then exceed the monthly rent which is £450 per month and this would effectively leave him with a deficit if his other outgoings stayed the same.

20. Mr Richardson confirmed both orally and in his affidavit that his salary has decreased by several thousand a year since 2020 when he changed jobs and although he finds his job interesting and rewarding he advised it can be stressful as he is a drug and alcohol worker and he wishes to ensure his private life is as stress free as possible and so wishes to try and sell the Property to pay off the mortgage on that, to pay off his own mortgage of which there is approximately £30,000 left and then given £10,000 to his daughter to help her buy a house. Mr Richardson confirmed that if the tenancy continued he would be worried about how he would meet his commitments, worried he could not afford to pay for repairs or any unforeseen eventuality and that this whole process is causing him additional stress that he wishes to avoid in the future by ceasing to be a landlord. He also advised he had a difficult time with a previous tenant and does not want any further stress from continuing to rent out this his sole rental property.
21. The Applicant then spoke about the condition of the Property. He referred to photographs lodged in the inventory of productions which were taken when he last inspected the Property which he stated was over a year ago, he advised there was a lot of mess and clutter in the Property and evidence of several cats, more than the 2 he had allowed to be a the Property. Despite asking the Respondent to clear it up when he reinspected it he advised it was not any better. The Applicant advised that he was concerned about the state of the Property as not only had there been rubbish, overflowing cat trays and cat mess when he asked a gas engineer to do the gas safety check this year, the engineer advised that he had to go out himself as his staff refused to go due to the state of the Property. Mr Richardson referred to an email lodged in process, number 2 in the inventory, which is a letter from A Thomson Plumbing and Heating Services Ltd dated 25th January 2024 which advises that "I had to undertake the job myself as my employees refused to enter the property. Out of goodwill I completed the job this year but going forward I am sorry for my own and my employees health risk we not undertake this tasks in future until the property has been cleaned and sufficiently upgraded to a standard where our health and safety is not put at risk." Mr Richardson confirmed that in light of this he believes the Property is not being kept in proper order and he is concerned that he would not be able to get tradesmen to visit when required.
22. The Tribunal queried with Mr Richardson the date of commencement of the lease was, as the draft lease lodged had shown a date of entry of 1st July 2015 but the Applicant's affidavit referred to him entering into a lease agreement with Ms Brandwijk on 26th June 2015. The Respondent had previously advised that she thought the formal date of commencement was 1st July but that she might have been allowed to put some stuff in the Property informally before then on 26th June and Mr Richardson confirmed that he agreed with that but confirmed the actual entry date was 1st July 2015.
23. Under questions from the Tribunal regarding the effect of the increase in mortgage payments and the reduction in disposable income this will cause Mr Richardson stated firmly that the rent going forward would not cover the outgoings, that this would cause him stress and anxiety and personal hardship he did not know how he would meet any unexpected costs for repairs and or emergencies and again confirmed it was his sole intention to sell the Property if

he gained possession. He advised “this is too much for me and I want out of this game”.

24. With regard to the Respondent’s position Mr Richardson advised that she lives alone at the Property with her cats, that he would have been willing to consider selling the Property to her but did not hear anything from her with any offer. He has not received any evidence to support her claim she has medical issues that would make it difficult for her to move. He also indicated he had done some research himself into availability of houses in this area and found that several were being advertised privately and he also believed that there would be a chance of some social housing from local housing associations. He did not know if the Respondent has been in touch with the Council.

- **Findings in Fact**

1. The Applicant and Respondent entered into a short assured tenancy of the Property for a period of 6 months from 1st July 2015 and continuing thereafter on a month to month basis.
2. The Applicant is the Landlord and owner of the Property.
3. The Applicant served a Form AT5 on the Respondent who is the Tenant prior to the creation of the tenancy.
4. The Tenancy is a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988.
5. The rent payable is £450 per month in terms of the lease.
6. The Rent is paid up to date.
7. The Applicant has served a Notice to quit terminating the contractual tenancy on 1st August 2023
8. A S33 notice was served on the Respondent giving 2 months’ notice that the Applicant required possession of the Property by 14th August 2023.
9. The Applicant wishes to cease letting this property and cease being a landlord.
10. A s11 notice in terms of the Homelessness etc. (Scotland) Act 2003 was served on the Scottish Borders Council on 24th August 2023.
11. The Applicant’s fixed rate mortgage on the let Property comes to an end on 1st May 2024.
12. The Applicant’s mortgage rate will increase substantially to £513 from 1st May 2024.
13. The mortgage payment is going to exceed the monthly rent.
14. The Applicant has a mortgage on his residential property which has also increased recently.
15. From the 1st May 2024 the Applicant’s income is going to be less than his outgoings.
16. The Applicant wishes to sell the Property.
17. The Respondent lives by herself at the Property and has more than 2 pet cats there.
18. Employees of a gas safety engineer refused to attend to do a gas safety check in January 2024 due to the condition of the Property.
19. The Tribunal finds it reasonable that an order for eviction be granted.

Reasons for Decision

20. The Applicant entered into a Short Assured Tenancy with the Respondent which according to both the Respondent as per her comments at the CMD and the Applicant commenced on 1st July 2015. The Respondent advised she may have had access to put in some items to the Property before then but agreed the tenancy commenced then. The original term of the tenancy, according to the draft tenancy agreement lodged was 6 months and an AT5 form has been produced signed by the tenant on 26th June 2015. In light of this evidence the Tribunal accepts the tenancy entered into is a Short Assured Tenancy with an ish date of 1st of each month. The Applicant has served a notice to quit terminating the tenancy on an ish or termination date namely 1st August 2023. He has also given notice of his intention to require possession in terms of S33 of the Act, which notice is dated 13th June and advises he requires possession on 14th August 2023. The Applicant has lodged a track and trace receipt showing the notices were received by the Respondent on 14th June 2023.
21. 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 it’s 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.
22. 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.
23. The Tribunal has seen and is satisfied that the Applicant has given notice to the local authority and notes they have a duty to offer advice and assistance to the Respondent.
24. The Applicant has shown in detail both in his written productions and orally at this hearing that the increase in costs that are happening due to the rise in mortgage rates and which are now affecting him directly, since his fixed rate mortgages have come or are coming to an end, are going to cause him real financial hardship. The Applicant has shown by providing very frank and detailed information in his productions, that his income has over the last few years decreased due to earning less than he previously did; that his mortgage costs are increasing and from 1st May the mortgage on the rented property is going to exceed by around £50 a month the actual rent received; that to keep his residential mortgage at the same rate he has had to increase the term of the mortgage incurring arrangement fees and additional costs over the term. The Tribunal found the Applicant to be sincere and credible in his explanation that due to these increase costs and due to a wish not to have the stress and

anxiety that he finds comes from being a landlord that he has a genuine desire to sell the Property and to use the free proceeds of sale to pay off his own mortgage on his home and to help his family. The financial information was supported and evidenced by payslips; letters from Santander and the Mortgage Works. The Tribunal also had before it a letter from Bannerman Burke Law dated 26th January 2024 to the Respondent enclosing a valuation of the Property and advising the Applicant would be willing to consider an offer for the Property. No response was received to this request.

25. In addition the Tribunal noted and accepted the evidence presented by the Applicant as to the condition of the Property and noted that his photographs taken over a year ago supported the claim the tradesman this year that his employees would not enter the property due to the state of it.
26. The Tribunal notes that despite asking for detailed information from the Respondent after the CMD, in particular evidence to show that she had medical conditions that would make moving difficult; that she had paid money to improve the Property and also asking for her submissions on reasonableness, the Tribunal has received no further information or supporting evidence from the Respondent and she has not appeared at today's hearing.
27. The Tribunal balancing the interests of both parties, and weighing up the evidence finds that the Applicant has a genuine desire to cease being a landlord, that if the tenancy continues his outgoings will exceed his income due to the mortgage increases, that the property is not being kept in a good condition and that this could lead to issues with tradesmen choosing not to visit which could be detrimental to both the Applicant and the Respondent. Taking all of this into consideration the Tribunal finds that it is reasonable for the eviction order to be granted.

- **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.

J. Todd

Legal Member/Chair

21st March 2024
Date