



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/23/1432

Re: Property at 187 Main St, Wishaw, ML2 7NE (“the Property”)

Parties:

Mr Spencer Simmons, Mrs Manda Simmons, Berth 12 Blackwall Basin, c/o Canal and River Trust, 420 Manchester Road, London, E14 9ST (“the Applicants”)

Miss Greer Carroll, 187 Main St, Wishaw, ML2 7NE (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. This is an application in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The Application was dated 3rd May 2023. The Applicant is seeking an order for recovery of possession in terms of section 33 of the Act.
2. On 28th August 2023, all parties were written to with the date for the Case Management Discussion (“CMD”) of 6th October 2023 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 15th September 2023.
3. On 28th August 2023, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by letterbox service. This was evidenced by Certificate of Intimation dated 28th August 2023.

Case Management Discussion

4. A CMD was held on 6th October 2023 at 2pm by teleconferencing. Neither the Applicant nor the Respondent were present or represented. There was no explanation why the Applicant, in particular, was not present or represented. At on or around 10.05 am the Tribunal Clerk contacted the Applicant's representative to confirm if they wished to proceed with the application. The telephone was not answered. The Tribunal dismissed the case as it was not clear that the Applicant wished to rely on the matters within the case.
5. On 9th October 2023, the Applicant's representative, Mrs Colette Lloyd, emailed the Housing and Property Chamber advising why she was not able to attend the CMD. She had to attend hospital with a close family member. This situation was an urgent and unplanned matter.
6. On 12th October 2023, Mrs Lloyd emailed to the Housing and Property Chamber to confirm that she wished her previous email to be considered as a recall request.
7. The Tribunal accepted that it was in the interests of justice to allow the recall to be granted given that Mrs Lloyd had intended to attend the CMD but had been unable to do so as she needed to attend hospital for urgent medical treatment for a close family member. The recall was allowed.
8. On 27th February 2024, all parties were written to with the date for the Case Management Discussion ("CMD") of 28th March 2024 at 10am by teleconferencing.

The recalled Case Management Discussion

9. The Tribunal held a Case Management Discussion ("CMD") on 28th March 2024 at 10am by teleconferencing. The Applicants were not present but were represented by Mrs Colette Lloyd, Independent Estate Agents. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Tribunal considered the Application. The Respondent did not make any representations prior to the CMD.
10. Mrs Lloyd told the Tribunal that there have been no payments since October 2021. There has been no contact from the Respondent since that point. The arrears currently stand at £9605.00.
11. Mrs Lloyd said that the Respondent has been in the Property since 2013. She has had a history of missed payments. The Applicants have been sympathetic to the Respondent in terms of the arrears. Particularly as she works in the hospitality sector and had been greatly affected by Covid. The Respondent had been very good at keeping in touch until October 2021. A payment order was

granted by the Housing and Property Chamber in September 2023. The Applicants had hoped that starting that process would encourage the Respondent to start to communicate with the Applicants or the letting agent. However, this did not result in any contact from the Respondent. The Applicants engaged the services of a debt collection company. In January 2024 the debt collection agency located the Respondent at her mother's address. The Respondent told them that she was going back and forwards between her mother's house and this property. Mrs Lloyd noted that she had written to the Respondent in July 2023 by recorded delivery letter. The Respondent had signed for this letter at the Property.

12. Mrs Lloyd said that she had not been into the Property for a gas check as there is no gas within the Property. The EICR is still within its 5 year period. However, she believes that the Respondent is in the Property at times. There are no welfare concerns given the contact by the Respondent with the debt collection company.
13. Mrs Lloyd noted that there had been a great relationship with the Respondent until she stopped paying the rent and stopped communicating. The Applicants had not pursued the arrears initially as the Respondent was a good tenant who looked after the Property. After a year of non payments matters needed to proceed. Mrs Lloyd said that her office was in the same street as the Property, though she could not see if there were movements in the Property as the windows could not be seen from the ground.
14. Mrs Lloyd said that there had been no known benefits issues. She periodically checks with the DWP but there has been no benefits claims to her knowledge. Mrs Lloyd said that she had sent out letters to the Respondent signposting advice agencies such as Shelter Scotland and Citizen's Advice Bureau.
15. The Tribunal was satisfied that it was appropriate to grant an order for eviction.

Findings in Fact and Reasons for Decision

16. The parties entered into a Short Assured Tenancy on 7th June 2013 until 8th December 2014 and thereafter on a month to month basis. An AT5 was signed by both parties on 30th May 2013. The rent payments of £275 are due on the seventh day of each month.
17. The Respondent has not paid any rent since October 2021. She has not been in communication with the Applicants or the agents since then.
18. The Respondent was found to be living at her mother's house in January 2024 but has said that she is backwards and forwards to the Property.
19. The Tribunal was satisfied that there were no other issues of reasonableness before them and that the notices had been served in an appropriate manner and that a Short Assured Tenancy had been entered into by the parties. Given

this the Tribunal was satisfied all appropriate paperwork had been served the Order for repossession was granted.

Decision

20. The Applicants are entitled to an Order of for recovery of possession.

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.

Gabrielle Miller

28th March 2024

Legal Member/Chair

Date