



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 (“Act”)

Chamber Ref: FTS/HPC/EV/18/1045

Re: Property at 217 Old Inverkip Road, Greenock, PA16 9EW (“the Property”)

Parties:

Mr George Gregory, Mr Nicholas Tinney, 44 Roxburgh Road, West Norwood, SE27 0LE; North Cliff, Cliff Terrace Road, Wemyss Bay, PA18 6AP (“the Applicants”)

Ms Amanda Heath, 217 Old Inverkip Road, Greenock, PA16 9EW (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member)

Decision (in absence of the Respondent)

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

Background

This is an application for eviction and recovery of possession in terms of section 33 of the Act and Rule 66 of the Tribunal Procedure Rules.

Case Management Discussion (“CMD”)

The application called for a Case Management Discussion on 23 August 2018. The Applicant was represented by Ms Pauline Ward Solicitor. The Respondent did not appear. The Respondent had emailed the Tribunal Administration on the morning of the CMD with a copy medical certificate and screenshots allegedly in respect of payments from her Universal Credit to the Applicant.

Alan Strain

The Medical Certificate stated that she was unfit for work due to stress. The covering email from the Respondent stated that due to ill health she was unable to attend the CMD. It also stated that she was awaiting treatment for Fibromyalgia, was arranging to take legal advice and wished a new hearing.

The Tribunal heard submissions from the Applicant's solicitor to the effect that the order should be granted, the ongoing prejudice to the Applicant in the event of further delay and that rent was only just starting to be paid with effect from this month. It still left substantial arrears to the Applicant of £4083.63.

The Tribunal considered the following documents which had been lodged in support of the application:

- (i) Form E received 1 and 14 May 2018;
- (ii) Tenancy Agreement signed and dated 20 October 2017;
- (iii) AT5 signed and dated 20 October 2018;
- (iv) Notice to Quit dated 14 February 2018 which specified 20 April 2018 as the date to remove;
- (v) Section 33 Notice signed and dated 14 February 2018 which specified 20 April 2018 as the date to vacate by;
- (vi) Sheriff Officer's certificate of service of the Notice to Quit and Section 33 Notice on 14 February 2018; and
- (vii) Section 11 Notice to Inverclyde Council dated 30 April 2018.

The Tribunal also considered the fact that the Respondent had been given notice of the CMD by letter from the Tribunal of 27 July 2018. She had not lodged any written representations with the Tribunal. She received a further letter from the Tribunal of 16 August 2018 advising the date of the CMD. The letter of 27 July 2018 from the Tribunal had been served by Sheriff Officers on 30 July 2018. The letter specifically drew to the Respondent's attention that the Tribunal could determine the matter in her absence at the CMD.

Decision and Reasons

The Tribunal considered the documents before it. There had been a valid termination of the short assured tenancy. The Tribunal has no discretion other than to grant an order for eviction and recovery of possession in terms of section 33 of the Act. No defence had been offered by the Respondent despite having been advised of the opportunity to lodge written submissions and the date of the CMD. The Respondent had been put on notice that the Tribunal could determine the matter at the CMD.

The Tribunal considered the Respondent's medical certificate and email of today's date. The medical certificate simply stated that the Respondent was unfit for work. It did not state that she was unable to attend the CMD due to ill health. It was not a soul and conscience certificate.

The email from the Respondent did not offer any defence to the application for eviction.

Alan Strain

The Respondent's email sought a new Hearing to afford her the opportunity to obtain legal advice and representation. The Tribunal considered that she had ample opportunity to do so in advance of the CMD.

The Tribunal considered the overriding objective carefully. In doing so the Tribunal concluded that it had sufficient information before it upon which to make a decision and the procedure was fair. The Tribunal was not prepared to adjourn the CMD in the circumstances.

The Tribunal accordingly granted the order for eviction and 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.

Alan Strain

Legal Member/Chair

Date

23 August 2018