



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/22/1843

Re: Property at 3 Silver Firs, Newarthill, Motherwell, ML1 5TJ (“the Property”)

Parties:

Mrs Maureen Bell, Mr Peter Bell, 45 Argyll Wynd, Carfin, Motherwell, ML1 4GJ (“the Applicant”)

Mrs Lynn Ruthven (also known as Simm), 3 Silver Firs, Newarthill, Motherwell, ML1 5TJ (“the Respondent”)

Tribunal Members:

John McHugh (Legal Member) and Linda Reid (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession of the Property in favour of the Applicant should be made but that enforcement should be postponed until 31 January 2023.

Background

The Applicant is the landlord and the Respondent the tenant in terms of a short assured tenancy in respect of the Property.

The Applicant is seeking an order for possession of the Property on the basis that the tenancy has terminated.

The Case Management Discussion

A Case Management Discussion took place by telephone conference on 6 December 2022. Both parties were present.

Findings in Fact

The Applicant is the landlord and the Respondent the tenant in terms of a short assured tenancy in respect of the Property.

The tenancy agreement is dated 4 August 2010.

On 1 April 2022 the Applicant served notice to quit upon the Respondent as well as notice under section 33 of the Act. In terms of same, the Respondent was to vacate the Property by 4 June 2022.

The Respondent remains in occupation of the Property.

Reasons for Decision

The Tribunal was satisfied that the necessary formalities had been performed by the Applicant such that the Tribunal was entitled to make an eviction order. The Tribunal also requires to determine whether it would be reasonable to make such an order.

At the CMD, the Applicant indicated that they require to sell the Property to repay mortgage debt due both in respect of their own house as well as the Property. Increasing mortgage interest rates were costing them around £1000 extra each month. In addition, the Applicant perceive that the property market is in decline so any delay in the sale would be prejudicial to them.

The Respondent accepts that the Applicant should be entitled to an eviction order but her issue is that she and her family have nowhere else to go at present. She lives in the Property with her husband and two children aged 17 and 14. A stepchild (also 14) regularly stays also. The local authority have said that they cannot offer an alternative house at the moment although the Respondent has a high level of qualifying points.

The Tribunal considers it reasonable to grant an order for possession. The Tribunal has considered carefully the submissions by the Applicant regarding their financial position. However, having regard to the need for the local authority to find alternative accommodation and to the fact that there may be a delay in that process in particular because of the holiday period, the Tribunal will postpone enforcement of the Order until 31 January 2023.

Decision

The Tribunal will make an Order for possession of the Property in favour of the Applicant but enforcement will be postponed until 31 January 2023.

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 McHugh

6th December 2022

Legal Member/Chair

Date