



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 Housing (Scotland) Act 1988 (“the 1988 Act”)

Chamber Ref: FTS/HPC/EV/23/1409

Re: Property at 18 Speckled Wood Court, Dundee, DD4 0LY (“the Property”)

Parties:

Fixrole Limited, 12 Milton Street, Dundee, DD3 6QQ (“the Applicant”)

Ms Fay McLaren Cuthbert Whyte, 18 Speckled Wood Court, Dundee, DD4 0LY (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

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

Background

- 1. The Applicant seeks an order for possession of the property in terms of Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). A short assured tenancy agreement, AT5 notice, Notice to Quit, Section 33 Notice, Sheriff Officer certificate of service and Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 were lodged in support of the application.**
- 2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 24 August 2023 at 10am and that they were required to participate. Both were provided with a telephone number and passcode. Prior to the CMD, the Respondent lodged brief submissions.**

3. The CMD took place by telephone conference call on 24 July 2023. The Applicant was represented by Mr Gray and the Respondent by Ms Falconer.

Case Management discussion

4. Mr Gray told the Tribunal that the Applicant intends to renovate and sell the property. It is in poor condition and renovation is required. The property is of non-standard construction which means that it is not possible to obtain a mortgage, so it will have to be sold to a cash buyer. There are rent arrears of £449 which are due to a shortfall between benefit payments and the rent. The Applicant also believes that the property is overcrowded as it is currently occupied by 2 families and is only a one-bedroom property. The property is one of 9 owned by the Applicant, purchased as a retirement fund for the directors.
5. Ms Falconer told the Tribunal that the property is occupied by the Respondent and her 2 daughters, aged 14 and 2. It is a three bedroom property. The Respondent made a repairing standard application to the Tribunal due to the condition of the property. It is affected by dampness and mould and there are issues with windows, the kitchen, and the electrics. An inspection and hearing took place recently and a decision is awaited. As a result of the condition of the property, the Respondent would prefer to be re-housed by the Local Authority. She is on a waiting list and hopes to be offered accommodation in the same area, to avoid disruption to her family. Her younger daughter's father also lives nearby.
6. Mr Gray advised the Tribunal that he was unaware of the repairing standard case and has not been instructed to deal with it on behalf of the Applicant.

Findings in Fact

7. The Applicant is the owner and landlord of the property.
8. The Respondent is the tenant of the property in terms of a short assured tenancy agreement.
9. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondents on 27 February 2023
10. The property requires to be repaired and renovated.
11. The Respondent resides at the property with two children. There are rent arrears of £449.
12. The Respondent wishes to move to alternative Local Authority housing due to the condition of the property.
13. The Applicant intends to sell the property.

Reasons for Decision

14. The application was submitted with a short assured tenancy agreement and AT5 Notice. The initial term of the tenancy was 28 November 2017 until 27 November 2018, with a provision that it would continue thereafter on a month to month basis if not terminated.
15. Section 32 of the 1988 Act states “(1) A short assured tenancy is an assured tenancy - (a) which is for a term of not less than 6 months; and (b) in respect of which a notice is served as mentioned in subsection (2) below. (2) The notice referred to in subsection (1)(b) above is on which – (a) is in such form as may be prescribed; (b) is served before the creation of the short assured tenancy; (c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under the tenancy; and (d) states that the assured tenancy to which it relates is to be a short assured tenancy.”
16. The Tribunal is satisfied that the tenancy agreement between the parties was for an initial term of 12 months and therefore meets the requirements of Section 32(1) of the 1988 Act. The Tribunal is also satisfied that an AT5 Notice was given to the Respondent prior to the creation of the tenancy. In the circumstances, the Tribunal determines that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act.
17. From the documents submitted with the application, the Tribunal is satisfied that the Applicant served a Notice to Quit and Section 33 Notice on the Respondent on 27 February 2023. The Notice to Quit called upon the Respondent to vacate the property on 27 April 2023, an ish date. The Notice contains the information prescribed by the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and complies with the terms of Section 112 of the Rent (Scotland) Act 1984. The Tribunal is satisfied that the Notice to Quit is valid and that the tenancy contract has been terminated. The Section 33 Notice was also served on 27 February 2023 and gave the Respondent 2 months notice that the Landlord wished to recover possession of the property. A Section 11 Notice was submitted with the application, with evidence that it was sent to the Local Authority. The Applicant has therefore complied with Section 19A of the 1988 Act.
18. Section 33 of the 1988 Act, (as amended by the Coronavirus (Recovery and Reform) (Scotland) Act 2022) states “(1) 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 may make an order for possession of the house if the Tribunal is satisfied – (a) that the short assured tenancy has reached its finish; (b) that tacit relocation is not operating; (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” Subsection 2 states “The period of notice to be given under subsection (1)(d) above shall be – (1) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period; (ii) in any other case, two months”. The Tribunal is satisfied that the tenancy has reached its finish and, as the Applicant has served a valid Notice to Quit, that tacit relocation is not operating. A valid notice in terms of section 33(d) has also been served on the Respondents, giving at least two months’ notice that the Applicant required possession of the property.

19. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession, in terms of Section 33(e) of the 1988 Act.

20. The Tribunal had regard to the following: -

(a) Both parties told the Tribunal that the property is in poor condition. The Applicant says that renovation is required. The Respondent’s position is that the property is affected by mould and damp and that there are other significant repairing standard issues. A decision from the Tribunal on a repairing standard application is awaited.

(b) The Respondent would prefer to move from the property because of its poor condition.

(c) The Respondent has incurred a small amount of rent arrears due to a shortfall between benefit payments and the rent.

(d) The Applicant wishes to sell the property to fund the retirement of the directors.

21. For the reasons specified, the Tribunal is satisfied that it would be reasonable to grant the application.

22. The Tribunal is satisfied that the Applicant has complied with the provisions of the 1988 Act and that it would be reasonable to grant the order.

Decision

23. The Tribunal determines that an order for possession of the property should be granted against the Respondent.

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.

Josephine Bonnar

Josephine Bonnar, Legal Member

24 August 2023