



**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/21/0400

Re: Property at 19 Campsie Way, Irvine, KA11 1JQ (“the Property”)

Parties:

Easton Property Newfield Ltd, 2 Newfield Drive, Dundonald, KA2 9EW (“the Applicant”)

Ms Leeann Mary Hanlon, 19 Campsie Way, Irvine, KA11 1JQ (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and Frances Wood (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 of the Property be made.

Background

- 1. This was a Hearing held on 3rd June 2021 to consider the application made by the Applicant dated 19th February 2021 for an order of possession of the Property in terms of Rule 66 of the Tribunal Rules. The Hearing took place by teleconference because of the current coronavirus restrictions. The case FTS/HPC/CV/21/0402 was also dealt with.**
- 2. A case management discussion had been held on 16th April 2021 and a Direction in terms of Rule 16 of the Tribunal Rules had been issued on the same date.**
- 3. The Direction was in the following terms:**

The Applicant is required to provide:

3.1 Written submissions on whether or not it is reasonable to grant an order of possession under Section 33 of the Housing (Scotland) Act 1988.

3.2 Copies of any communications between the parties in connection with non payment of rent and procedures for making such payment.

3.3 Details of any witnesses she? intends to lead in evidence

The Respondent is required to provide:

3.4 Written submissions on whether or not it is reasonable to grant an order of possession under Section 33 of the Housing (Scotland) Act 1988.

3.5 Copies of any communications between the parties in connection with non payment of rent and procedures for making such payment and in connection with any repairs which the Respondent intimated to be outstanding.

3.6 Details of any witnesses it intends to lead.

4. The Respondent made no response to the Direction.

5. The Applicant submitted written representations in response to the Direction together with copies of letters, bank statements and an updated rent statement.

6. The Respondent and Steven Easton are parties to a short assured tenancy agreement in respect of the Property which is dated 10th November 2011.

7. The Applicant became the owner of the Property on 6th July 2018 and has title and interest to make the application by virtue of that ownership.

8. The Respondent was not present on the teleconference and, from enquiries made, it appeared that the date and time of the Hearing had been intimated to her by the Tribunal by letter dated 5th May 2021. It was also noted that the date and time of the Hearing was intimated to her when she was present at the case management discussion which had been held on 16th April 2021.

9. The Applicant was represented on the teleconference.

Preliminary Matters

10. Mr Steven Easton, a Director of the Applicant company was present and indicated that he was seeking an order of eviction. He invited the Tribunal to consider the terms of the application and also the written

representations which had been submitted on 21st May 2021.

11. Mr Easton apologised for the Applicant's non appearance at the case management discussion which, he said, had been due to an administrative oversight in its office.

Findings in Fact

1. The Applicant and Respondent are parties to a short assured tenancy agreement in respect of the Property dated 10 November 2011.
2. The commencement date of the tenancy was 10th November 2011 until 10th May 2012 (both dates inclusive).
3. The Applicant served a notice to quit on the Respondent dated 4th August 2020 requiring vacation of the Property by 10th February 2021.
4. The Respondent remains in occupation of the Property.
5. There are rent arrears of £ 8,816.
6. The required notice in terms of the Homelessness etc. (Scotland) Act 2003 has been given to the local authority.

Findings in Fact and Law

1. The tenancy continued by tacit relocation from 10th May 2012 until it was brought to an end by service of the Notice to Quit dated 4th August 2020.
2. The tenancy ended on 10th February 2021.
3. The Applicant is entitled to recover the Property because the tenancy has been brought to an end.

The Hearing

12. It was explained to the Applicant that, prior to the amendments to the legislation as a consequence of the terms of the Coronavirus (Scotland) Act 2020, the Tribunal would be obliged to issue an order for recovery of possession of a property under Section 33 of the Housing (Scotland) Act 1988. It was explained that the Tribunal now requires to consider whether or not it is reasonable to make such an order.

13. The Tribunal considered the documents which had been lodged with the application:

(a) Copy of the short assured tenancy agreement dated 10 November 2011.

(b) AT5 Form relating to the short assured tenancy.

(c) Notice to Quit dated 4th August 2020 requiring the Respondent to leave the Property by 10th February 2021.

- (d) Certificate of Posting of documents dated 4th August 2020.**
- (e) AT6 form dated 4th August 2020.**
- (f) Section 33 Notice of Termination of Short Assured Tenancy dated 4th August 2020.**
- (g) Copy of Notice to local authority under Section 11 of the Homelessness etc (Scotland) Act 2003.**
- (h) Updated Rent Statement brought down to 21st May 2021.**
- (i) Copies of correspondence to respondent with regard to rent arrears.**

- 14. The Tribunal noted that the term of the tenancy stated in the short assured tenancy agreement is “for a fixed period from 10th November 2011 until 10th May 2012 (both days inclusive), and monthly thereafter until terminated by either the Landlord or the tenant serving on the other at least two months’ prior written notice by recorded delivery letter.”**
- 15. The Tribunal noted that the tenancy had continued from 10th May 2012 on a monthly basis until the Notice to Quit had been served which brought tacit relocation to an end as at 10th February 2021.**
- 16. Mr Easton said that the correct process had been adopted in serving the notice to quit and AT6 form and that the Tribunal had before it evidence of service.**
- 17. Mr Easton said that the Property was part of a portfolio of properties which his company has and that it was an investment property. He said that the ground for possession was not in relation to rent arrears but that these are considerable. He referred the Tribunal to the rent statement which had been lodged and which showed there to be arrears of £8,391 as at 21st May 2021. He said that the level of arrears as at the date of the Hearing is £8,816. He said that the Applicant’s intention upon recovery of the Property is to re-let it and for it to produce income.**
- 18. Mr Easton confirmed that the Property has not been adapted for specific needs of the Respondent or anyone else residing at the Property.**
- 19. Mr Easton said that he knew little about the personal circumstances of the Respondent but that he understood that she has children and he does not know their ages.**

20. Mr Easton said that he knew of no issues involving the health of the Respondent and said that he thinks that she is in employment.

21. Further, Mr Easton said the Respondent had not engaged with the Applicant despite regular contacts on the matter of her arrears. She had been a 'good tenant' for many years, but it was reasonable for the applicant to recover the property in the circumstances outlined.

Discussion and Determination

22. The Law

Section 33 of the Housing (Scotland) Act 1988 as amended by The Coronavirus (Scotland) Act 2020

Recovery of possession on termination of a short assured tenancy.

- (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; and
 - (c)
 - (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.
- (2) The period of notice to be given under subsection (1) (d) above shall be—
 - (i) if the terms of the tenancy provide, in relation to such notice, for a period of more than six months, that period;
 - (ii) in any other case, six months.
- (3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.
- (4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

- 23. The Tribunal considered the documents to bring the tenancy to an end and found the notice to quit and AT6 form to be in order and that they had been properly served on the Respondent who had raised no issue about them at the case management discussion.**
- 24. The Tribunal noted that the period of notice in the notice to quit was six months which was appropriate in terms of the statutory provisions and that the application to the Tribunal had not been made prior to the expiry of the notice period.**
- 25. The Tribunal noted that the appropriate notice had been given to the local authority in terms of the Homelessness etc. (Scotland) Act 2003**
- 26. The Tribunal required to consider whether or not it is reasonable to grant an order for possession of the Property. The Direction of 16th April 2021 required both parties to make written submissions on the matter. The Respondent had made no such submissions. The Applicant made written submissions which stated that a valid short assured tenancy was in existence which had been brought to an end because it had reached its finish and that tacit relocation was not operating. The submission stated that the Applicant had followed the correct procedure to seek recovery of the Property.**
- 27. Mr Easton submitted that it was reasonable for the Applicant to get a return on its investment in the Property and that it was not currently doing so because of the level of rent arrears.**
- 28. The Tribunal considered the reasonableness of granting the order. The Respondent had chosen not to make submissions on the matter or attend or be represented at the Hearing. In the absence of any information on the matter from the Applicant, the Tribunal could only consider what was before it. But for the provisions of the Coronavirus (Scotland) Act 2020, the Tribunal would have no discretion as to whether or not to grant an order for possession. In determining whether it is reasonable to grant such an order, the Tribunal has to perform a balancing exercise. It determined that, considering the needs of the Applicant, and having no substantive information before it with regard to the circumstances of the Respondent, it was reasonable to grant the order.**

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.

Martin J. McAllister
Legal Member
3rd June 2021

Martin McAllister