

**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/22/1541

Re: Property at 46 Castleton Crescent, Grangemouth, FK3 0BG ("the Property")

Parties:

**Mr Thomas Scott Howie, 5 Waddel Street, Carronshore, Falkirk, Stirlingshire, FK2
8HF ("the Applicant")**

**Richey Roy and Chloe Shearer, 46 Castleton Crescent, Grangemouth, FK3 0BG
("the Respondents")**

Tribunal Members:

Gillian Buchanan (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

At the Case Management Discussion ("CMD"), which took place by telephone conference on 30 August 2022, the Applicant was represented by Ms Chloe Herd of Clarity Simplicity Limited. The First Respondent was in attendance. The Applicant and the Second Respondent were not in attendance.

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that:-

Background

The Tribunal noted the following background:-

- i. The Applicant leased the Property to the Respondents in terms of a Short Assured Tenancy Agreement ("the SAT") dated 10 August 2015.
- ii. The initial term of the SAT was from 24 August 2015 to 24 August 2016.
- iii. The SAT provided that following the expiry of the initial term the SAT would continue on a month to month basis as has happened.
- iv. The rent payable in terms of the SAT was £500 per month.
- v. That on 23 April 2021 the Applicant served on the Respondents a Notice to Quit and a Notice under Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") purporting to require the removal of the Respondents from the Property no later than 22 May 2021.

- vi. That on 3 September 2021 the Applicant served on each of the Respondents by recorded delivery a Notice to Quit and a Notice under Section 33 of the 1988 Act requiring the removal of the Respondents from the Property no later than 24 March 2022.
- vii. That the Applicant's agent has served on Falkirk Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

The CMD

At the CMD Ms Herd for the Applicant made the following representations:-

- i. That the Applicant is seeking an eviction order against the Respondents in terms of Section 33 of the 1988 Act on the basis that the Respondents' tenancy of the Property has ended.
- ii. The Respondents are still in occupation of the Property.
- iii. It is fair and reasonable that an eviction order be granted.
- iv. The Applicant had previously raised proceedings against the Respondents for payment of rent arrears. The Applicant's representative could not provide the Tribunal with any information on the current arrears or the previous Tribunal application.
- v. The Applicant's representative could offer no other explanation as to why the Applicant required to recover possession of the Property.

The First Respondent made the following representations:-

- i. That the Respondents are still in occupation of the Property and want to remove therefrom.
- ii. The Property is too large for the Respondents – being over two floors - and is not suitable for the Second Respondent's needs. An adapted property is required, being ground floor accommodation without stairs. The Second Respondent suffers from fibromyalgia, uses walking aids, requires help to get dressed and washed and is in need of 24/7 care. The Second Respondent has been sleeping in the lounge of the Property for 2 years.
- iii. The Respondents are in constant contact with housing associations and the local authority and there are no suitable properties in the area or across Central Scotland. The Respondents have been assessed as "priority 1 functional needs" for housing.
- iv. In 2018 the Respondents intimated to the Applicant that they were planning to remove from the Property due to its unsuitability for the Second Respondent.
- v. The Respondents have been under threat of eviction from the Applicant since 2020 when eviction Notices were first served and there have been further such letters since. The Respondents are packed up and ready to move.
- vi. The Respondents had been allocated another property by Paragon Housing Association in July 2021 but this fell through due to a bad reference being provided.
- vii. Following service of the application the Respondents contacted Falkirk Council again. This took place on 6 August 2022. If an eviction order is granted the Council has no accommodation available to meet the Respondents' housing needs. Either the Respondents would require to move to unsuitable accommodation or they would require to split up with the Second Respondent perhaps moving back to her parents' home. The First Respondent is a full-time carer for the Second Respondent.
- viii. The Respondents have a 6 year old child.

- ix. If an eviction order is granted the Council cannot presently make any accommodation available to the Respondents near to their doctor, family etc. and none is likely to become available.
- x. The Respondents did not attend the CMD in the rent arrears Tribunal application previously made by the Applicant. The First Respondent was on medication and regrets not attending. At the outset of the SAT the Respondents were told their rent would be £450 per month. They were never told the rent had increased to £500 per month. The Respondents had some issues about the state of the Property. The Applicant's claim for rent arrears was based on the Respondents paying £50 too little rent each month over a number of years. The First Respondent accepted the SAT referred to an agreed rent of £500 per month. He said they did not look over the SAT when signing. The rent is presently being paid in full each month with an additional sum of £150 per month towards the rent arrears, all by direct payments from the Respondents' benefits.

During the CMD the Tribunal searched the published Decisions on the Tribunal website and noted the Decision reached in November 2021 relative to the rent arrears.

Reasons for Decision

The Tribunal was not persuaded that it was reasonable, in the circumstances, to grant an eviction order. The Applicant offered no explanation as to why possession of the Property required to be recovered other than that appropriate Notices had been served and had expired. Whatever the rent arrears position may be the Applicant did not seek an eviction order based on rent arrears accrued and there was no reference to any compliance or otherwise with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.

The First Respondent's representations were unchallenged. Suitable adapted accommodation is not available for the Respondents nor is any accommodation available for the Respondents within their area of choice. The granting of an eviction order would, in all likelihood, result in the Respondents' family being split up affecting, in particular, their young child.

Standing the absence of any substantive basis for an eviction order being sought by the Applicant the Tribunal determined that the granting of an eviction order would not be reasonable and refused the Applicant's application.

Decision

The Applicant's application for an eviction order was refused.

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.

Gillian Buchanan

Legal Member/Chair

30 August 2022
Date