



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/22/1346

Re: Property at 14 Torrington Crescent, Glasgow, G32 9NU (“the Property”)

Parties:

Mrs Ingrid Boyd, 3 Grenadier Park, Cambuslang, G72 8EP (“the Applicant”)

Mr Alan Moffat, 14 Torrington Crescent, Glasgow, G32 9NU (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Sandra Brydon (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 should be granted against the Respondent in favour of the Applicant.

Background

- 1. The Applicant seeks an order for possession in terms of Section 33 of the Housing (Scotland) Act 1988. A copy short assured tenancy agreement, AT5, addendum to tenancy, Notice to Quit, Section 33 Notice, copy will and letter from Glasgow City Council were lodged in support of the application. The Applicant also lodged a rent statement and paper apart with information about rent arrears and alleged antisocial behaviour at the property.**
- 2. A copy of the application was served on the Respondent by Sheriff Officer on 27 July 2022. Both parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 8 September 2022 at 10am and that they were required to participate. They were provided with the telephone number and passcode. Prior to the CMD, the Applicant’s representative submitted an amended paper apart and updated rent statement**

showing arrears of rent of £7085 on 1 August 2022.

3. The CMD took place on 8 September 2022. The Applicant was represented by Ms Grosvenor, solicitor. The Respondent participated.

Summary of discussion at CMD

4. The Tribunal discussed the documents lodged with the parties and noted the following -
 - (a) Mr Moffat confirmed that the short assured tenancy agreement is his current agreement with the Applicant and that he was given the AT5 notice before the tenancy was signed.
 - (b) Clause 3 of the agreement states that the term is six months from 1 December 2012 until 12 June 2012. Both Mr Moffat and Ms Grosvenor confirmed that the first date is a typographical error. The document was signed on 1 December 2011 and the tenancy started on that date.
 - (c) Mr Moffat confirmed that the Notice to Quit and section 33 Notice were received by him on or about the 12 July 2021.
5. The Tribunal noted that the addendum lodged with the tenancy agreement states that the parties agreed to continue the short assured tenancy on the same terms and conditions, from the ish date specified in the agreement, namely 1 June 2012. The only change is to the term. The document stipulates that the tenancy will continue on a month to month basis from 1 June 2012.
6. In response to questions from the Tribunal, Mr Moffat stated that he could not recall signing the addendum. However, the signature on the document is his signature. The document was witnessed by a friend of his so he thinks that it must have been signed by him at home, rather than at the letting agent's office. The Tribunal noted that the document was also signed on behalf of the Applicant by the letting agent. The addendum and signatures are undated. Ms Grosvenor advised the Tribunal that the addendum is a written variation to the tenancy agreement, converting it to a monthly tenancy after the initial term. She stated that the lack of a date did not invalidate it.
7. The Tribunal proceeded to discuss the issue of reasonableness. In response to questions from the Tribunal about the matters raised in the paper apart, Mr Moffat confirmed that the current arrears of rent were as outlined in the updated rent statement. He said that he had discussed the matter with his housing officer and was prepared to pay off the arrears if he was able to stay in the house. The Landlord had refused to agree to this. Mr Moffat told the Tribunal that was not paying his rent and told the letting agent that he would not pay if he was having to move out. He hadn't realised how long he had not been paying. Until recently both he and his partner had been unemployed, due to the pandemic. They received Universal Credit housing costs which they should have paid to the rent account. They had been struggling financially but both had recently started working again. Mr Moffat advised the Tribunal that he has 2

children. His son is 16 and has recently started work. His daughter is 14 and has just started 4th year at school. She is dyslexic and gets a lot of support from her school for this. She has important exams this year, which will probably be her last year in education. It would be disruptive for her to move to a different school at this stage. He has been trying to obtain alternative accommodation, in both the public and private sector, which would allow her to remain at this school until she finishes next year. Mr Moffat also told the Tribunal that his wife has mental health problems due to the stress of the eviction process and spent time in hospital several months ago following a suicide attempt.

8. In response to questions about the allegations of antisocial behaviour, Mr Moffat said that these are denied. He said that there may have been one or two problems during an absence from the property when his son was there alone, but not over several months. He added that he has spoken to the neighbours who are new. He told the Tribunal that he has lived at the property for 11 years without any problems. He specifically denied the allegation about drug dealers visiting the property.
9. Ms Grosvenor advised the Tribunal that the antisocial behaviour took place between February and April 2022 and was frequent during this time. A neighbour indicated that she was planning to move away because of the behaviour. However, recent enquiries have been made and established that there had been no incidents in the last 2 months. In response to questions from the Tribunal, Ms Grosvenor said that the Applicant's reasons for seeking possession of the property are as outlined in the paper apart. She was not aware of any other reasons for the decision and was unable to provide any information about the Applicant's circumstances. However, she told the Tribunal that the Applicant had made the application in her capacity as Executrix of the former owner of the property. As such, she is legally obliged to realise the assets and act in the best interests of the estate. The lack of rental income was a concern. Mr Moffat responded stating that he did not accept that the antisocial behaviour and rent arrears were the reasons for the application as the Notices were served in July 2021. The rent arrears did not start until August 2021, after the notices were served, and the antisocial behaviour complaints were all made in 2022.
10. The Tribunal determined that the application should proceed to a hearing to establish the following: -
 - (a) When was the addendum to the tenancy agreement signed by the parties?
 - (b) If the addendum was signed after 1 June 2012, did it convert the tenancy to a month to month term or has the tenancy continued by tacit relocation since that date?
 - (c) If the tenancy was not converted to a month to month term, is the Notice to Quit invalid?
 - (d) If the tenancy contract was terminated by a valid Notice to Quit, is it reasonable that an order for possession be granted.

11. The Tribunal advised parties that the application would proceed to a hearing by telephone conference call. Both were also told that they could lodge further documents in advance of the hearing. Mr Moffat was advised that he should consider whether to submit evidence regarding his attempts to obtain alternative accommodation, his daughter's schooling, and his partner's health issues.

Further Procedure

12. The Parties were notified that a hearing would take place by telephone conference call on 16 November 2022. Prior to the hearing, the Applicant submitted a number of documents including emails from the letting agent regarding the addendum, redacted emails between an unidentified neighbour the letting agent and the Applicant's solicitor, a handwritten note from "your next door neighbour" and screenshots from a ring doorbell camera of a male. The Respondent did not contact the Tribunal or lodge any documents or submissions.

13. The Hearing took place on the 16 November 2022. The Applicant was represented by Ms McGeough, solicitor. The Tribunal also heard evidence from Mr Jordan Kirkwood, service manager at Clyde Property. The Respondent did not participate and was not represented.

The Hearing

Mr Kirkwood's evidence

14. Mr Kirkwood referred to the addendum to the tenancy and stated that the date in the corner of the document (17 May 2012) was the date that the document was created and sent to the Respondent. He then referred to an email which had been lodged by the Applicant. It is dated 7 October 2022 and addressed to Ms McGeough. There is an attachment to the email, a file entitled "MX – 2610N 20120530 125148.pdf". He said that the middle number "20120530" is the 30 May 2012. This was the date that an electronic copy of the signed version of the document was created, after it had been returned by the tenant.

15. Mr Kirkwood told the Tribunal that he has had a number of phone calls and emails with a neighbour of the Respondent, regarding antisocial behaviour at the property. The complaints relate to noise and aggressive, intimidating behaviour. This included the Respondent standing at his back door shouting that he could be as loud as he wanted. The noise included shouting, loud music, and parties.

16. In response to questions from the Tribunal, about an email from his colleague which stated that the signed addendum had been received by the agency on 13 June 2012, Mr Kirkwood said that this had been a mistake. The 13 June

2012 was the date that the document was added to their portal. However, it had been received and an electronic copy made on 30 May, the date in the file reference. In relation to rent arrears, Mr Kirkwood said that the arrears are now £8720, with no payments since the CMD. Emails have been sent to the Respondent regarding the arrears, with no success. Regarding the antisocial behaviour, Mr Kirkwood said that he had spoken to Glasgow City Council on a couple of occasions, after they had written to advise that they had received reports of alleged antisocial behaviour.

Submissions from the Applicant's solicitor

17. In response to questions from the Tribunal, Ms McGeough said that Mr Kirkwood's evidence established that the signed addendum was received from the tenant before the tenancy ish on 1 June 2012 and that the tenancy was converted from that date to a monthly term. Even if that had not been the case, evidence had been lodged that the parties had verbally agreed to the change on 8 May 2012, leading to the issue of the addendum on 17 May 2012. Ms McGeough advised the Tribunal that she had redacted the various emails from the neighbours. She had only removed information which would, directly or indirectly, identify the sender, at the neighbour's request. She confirmed that she has been provided with an updated rent statement which shows a balance outstanding of £8720. In relation to the most recent submission, she said that the note which had been lodged from "your next door neighbour" had been put through the neighbour's letterbox after the redacted emails had been submitted and sent out to the Respondent. When asked about the Applicant's reasons for seeking possession of the property, she advised that the Notices were issued by the Applicant as Executor of the estate. The estate had been held in trust until one of the beneficiaries reached the age of 25. The house was now to be sold to pay the beneficiary his share of the estate. In response to a question about the Respondent's household and circumstances, Ms McGeough said that she had contacted the neighbour who had confirmed that the Respondent continues to reside at the property with his partner and two children, but no other information could be provided.
18. In her final submission, Ms McGeough said that the Applicant seeks an order for possession in terms of Section 33 of the 1988 Act. A Notice to Quit and Section 33 notice had been served on the Respondent on 12 July 2021. He had been given reasonable notice of the intention to seek possession. In relation to the issue of reasonableness Ms McGeough asked the Tribunal to take into account the high level of arrears, the fact that the Respondent had stated that he had stopped paying rent because he had been asked to move out and the fact that he had claimed universal credit housing costs but not passed these payments on to the Landlord. She told the Tribunal that, although a payment order had been granted and a charge for payment served, no payments to the arrears have been made. The Tribunal was also told that the evidence lodged established that the antisocial behaviour was significantly worse than the one or two isolated incidents conceded by the Respondent at the CMD, and that the behaviour also amounts to a breach of tenancy. The Local Authority are

involved, and the neighbours are in a state of fear and alarm due to the behaviour.

Findings in Fact

19. The Applicant is the Executor of the estate of the owner and landlord of the property.
20. The Respondent is the tenant of the property in terms of a short assured tenancy agreement with an initial term of 6 months from 1 December 2011 until 1 June 2012.
21. Following the initial term of the tenancy, the Landlord and Respondent agreed to continue the tenancy on the same terms and conditions, except for the term. The parties agreed that the tenancy would continue on a month to month basis from 1 June 2012.
22. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondent on 12 July 2022.
23. The Applicant intends to sell the property.
24. The Respondent has incurred arrears of rent of £8720.
25. The Respondent stopped paying rent following service of the Notice to Quit and section 33 notices.
26. The Applicant has received a number of complaints over several months about antisocial behaviour at the property. This has also been reported to the Local Authority.
27. The Respondent resides at the property with his partner and two children, aged 16 and 14.

Reasons for Decision

28. The application was submitted with a short assured tenancy agreement and AT5 Notice. The initial term of the tenancy was 1 December 2011 until 1 June 2012. An undated addendum to the tenancy was submitted, signed by both parties, indicating that the parties agreed to continue the tenancy on the same terms and conditions after the ish date, but on a month to month basis.
29. The Tribunal was provided with documents and heard oral evidence from Mr Kirkwood regarding the date on which the addendum was signed. The Tribunal found Mr Kirkwood to be credible and reliable. His explanation for the discrepancy between his email and a previous email from a colleague,

regarding the date of signature, was a reasonable one. The Tribunal is satisfied that the addendum was sent out to the Respondent on or about 17 May 2012, following a discussion between the agent and the Respondent. It was signed by the Respondent, and witnessed by his friend, at some point between 17 May and 30 May, when the signed document was received by the agent and an electronic version created.

30. 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.”
31. The Tribunal is satisfied that the tenancy agreement between the parties was for an initial term of 6 months and therefore meets the requirements of Section 32(1) of the 1988 Act. The Tribunal is also satisfied that AT5 Notice was given to the Respondent prior to the creation of the tenancy.
32. Section 32(3) of the 1988 Act (the version in force at the date of signature of the addendum) states, “ Subject to subsection (4) below, if, at the ish of a short assured tenancy, (a) it continues by tacit relocation; or (b) a new contractual tenancy of the same or substantially the same premises comes into being under which the landlord and the tenant are the same as at that ish, the continued tenancy or, as the case may be, the new contractual tenancy shall be a short assured tenancy, whether or not it fulfils the conditions set out in paragraphs (a) and (b) of subsection (1) above.
33. In the circumstances, the Tribunal determines that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act. it was for an initial term of 6 months and converted to a month to month term at the ish date on 1 June 2012.
34. 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 12 July 2021. The Notice to Quit called upon the Respondents to vacate the property on 1 February 2022, an ish date in terms of the addendum. 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 12 July 2021 and gave the Respondent more than 6 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 sent to the Local Authority. The Applicant has

therefore complied with Section 19A of the 1988 Act.

35. Section 33 of the 1988 Act, as amended by the Coronavirus (Scotland) Act 2020 (the version in force at the date of service of the notices), 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 six months, that period; (ii) in any other case, six 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 Respondent, giving at least six months’ notice that the Applicant required possession of the property.
36. 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.
37. The Respondent did not participate in the hearing or lodge written submissions or documents. At the CMD he provided the Tribunal with some information about his circumstances and why he did not consider it to be reasonable for an order for possession to be granted. He was advised that he could consider lodging evidence in relation to some of these matters, including his attempts to obtain alternative housing, his daughter’s dyslexia and schooling requirements and his partner’s health issues. He did not do so. In the absence of any evidence to support the information provided regarding these matters, the Tribunal is not satisfied that they were established or could be considered. However, the Tribunal is satisfied, from the information provided by the Respondent at the CMD, and the Applicant representative at the hearing, that the Respondent resides at the property with his partner and 2 children. The Respondent told the Tribunal at the CMD that he, his partner and their 16-year-old son are all in employment. Their 14-year-old daughter is still in education. The Tribunal noted that an order for possession which requires the family to move house, is likely to cause some disruption for the daughter, unless alternative accommodation in the same area is obtained.
38. The Tribunal notes that the Applicant is not the person who agreed to lease the property to the Respondent. The owner of the property has died, and the property is to be sold by the Applicant, as Executor, to meet her obligations to the beneficiaries, in terms of the will. In the meantime, the value of the estate has reduced, due to the failure by the Respondent to pay rent. This failure is not due to financial difficulty, but a decision by the Respondent to stop paying rent although he was in receipt of benefits specifically paid to cover his housing costs. The Tribunal also had regard to the complaints of antisocial behaviour

and the level of the arrears. Although neither of these issues applied at the time of service of the notices, both were established by the Applicant at the hearing and the Tribunal is satisfied that they are relevant. It is evident that the Respondent does not intend to resume payment of rent or address the arrears. The Tribunal is also satisfied that the complaints about antisocial behaviour do not relate to a couple of isolated incidents, but are ongoing, and that the complainers have indicated that they have experienced alarm, distress, and nuisance. Private landlords are required to deal with antisocial behaviour by their tenants and failure to do so can have an impact on their landlord registration status.

39. Having regard to the factors specified in paragraph 38, the Tribunal is satisfied that the reasons for seeking recovery of the property outweigh the possible disruption to the Respondent's daughter's schooling. In reaching this conclusion, the Tribunal notes that the Respondent is responsible for both the arrears of rent and the complaints about antisocial behaviour and has taken no steps to address these. Furthermore, if three members of the household are in employment, the family should be able to source alternative accommodation.

40. In the circumstances, the Tribunal determines that it is reasonable to grant the order for possession.

Decision

41. 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.

