



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/EV/22/3329

Re: Cuttieburn Croft, Craig, Rhynie, Huntly, AB54 4LR (“the Property”)

**Parties: Executors of the late Alisdair Barlas
C/O Burnett and Reid LLP, Suite A Ground Floor, 9 Queen's Road,
Aberdeen, AB15 4YL (“the Applicant”)**

Mr John Wright, East Brucklebog, Crathes, Banchory, AB31 5QP (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at Cuttieburn Croft, Craig, Rhynie, Huntly, AB54 4LR under Section 33 of the Housing (Scotland) Act 1988 be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with his goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 12 September 2022, the Applicant’s solicitor applied to the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for recovery of possession the Property in terms of Rule 66 the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a copy of a Minute of Lease between the late Alisdair Barlas and the Respondent, an AT5 signed and dated 28 June 2013, an account enquiry for the Craig Estate, a Notice to Quit, Section 33 Notice and an AT6 all dated 26 July 2022 together with a Recorded Delivery proof of delivery dated 27 July 2022 to a different address and a returned as undelivered Recorded Delivery envelope addressed to the Respondent at the Property, letters dated 20 June 2022 and 26 July 2022 from the Applicant's solicitor to the Respondent at an address which was not at the Property and an email to Aberdeenshire Council dated 12 September 2022.
3. On 13 February 2023 the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. In response to a Notice of Direction the Applicant's solicitor produced a Section 11 of the Homelessness etc. (Scotland) Act 2003 with email to Aberdeenshire Council dated 7 March 2023, various photographs, a valuation report and a print-out showing the MOT and vehicle tax status of a vehicle abandoned at the Property.
5. A Case Management Discussion ("CMD") was assigned to proceed on 2 May 2023 but was discharged as Sheriff Officers had been unable to serve the application on the Respondent at the address provided. After enquiries from the Tribunal the Applicant's solicitor provided a Sheriff Officer's trace report tracing the Respondent to East Brucklebog, Crathes, Banchory, AB31 5QP. He also made further written submissions in support of the case.
6. On 19 May 2023, the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 23 June 2023. The Respondent required to lodge written submissions by 9 June 2023. This paperwork was served on the Respondent at East Brucklebog, Crathes, Banchory, AB31 5QP by Roger Ewan, Sheriff Officer, Aberdeen on 23 May 2023 and the Execution of Service was received by the Tribunal administration.
7. The Respondent did not make any written response to the Application by 9 June 2023.

Case Management Discussion

8. The Tribunal proceeded with the CMD on 23 June 2023 by way of teleconference. The Applicant was represented by Alasdair Taylor from Burnett and Reid solicitors. There was no appearance by or on behalf of the Respondent despite the teleconference starting 5 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence.

9. The case was heard together with a further action for eviction which proceeded under Rule 65 of the Regulations under case reference FTS/HPC/EV/22/3325.
10. The Tribunal had before it an unsigned Minute of Lease between the late Alisdair Barlas and the Respondent, an AT5 signed and dated 28 June 2013, an account enquiry for the Craig Estate, a Notice to Quit, Section 33 Notice and an AT6 all dated 26 July 2022 together with a Recorded Delivery proof of delivery dated 27 July 2022 and a returned as undelivered Recorded Delivery envelope addressed to the Respondent at the Property, letters dated 20 June 2022 and 26 July 2022 from the Applicant's solicitor to the Respondent, an email dated 12 September 2022 to Aberdeenshire Council, a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 with email to Aberdeenshire Council dated 7 March 2023, various photographs, a valuation report and a print-out showing the MOT and vehicle tax status of a vehicle abandoned at the Property. The Tribunal noted the terms of these documents.
11. Mr Taylor moved the Tribunal to amend the Respondent's address to East Brucklebog, Crathes, Banchory, AB31 5QP. The Tribunal allowed that amendment. Thereafter he moved the Tribunal to grant an order for eviction under Section 33 of the Housing (Scotland) Act 1988. He explained that the Respondent had abandoned the Property several years ago. The Applicant had tried to engage with the Respondent at his new address to give up the tenancy, but to no avail. He had left possessions at the Property as shown in the photographs lodged including a van which had not been taxed or had a MOT for a number of years. He explained the Respondent had not paid rent in years and was approximately in £36000 of arrears. It was accordingly reasonable to submit in his submission.
12. The Tribunal questioned the validity of the Notice to Quit dated 26 July 2022 noting that the ish date fell on the 29th of the month, but yet the Notice to Quit stated the Respondent required to leave by 30 September 2022. Mr Taylor relied on "Evictions in Scotland" by Adrian Stalker at 59 and the Inner House decision of *McDonald v O'Donnell 2008 SC 189* in support of his proposition that a Notice to Quit calling upon a tenant to quit a day after the ish is not invalid. He submitted there would have been no confusion on the part of the Respondent, particularly with the service of the Notice under S33 of the Housing (Scotland) Act 1988, that the Short Assured Tenancy was being brought to an end.

Reasons for Decision

13. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the extensive written submissions made on behalf of the Applicant by Mr Taylor together with his oral submissions at the CMD. The Tribunal concluded that the

Applicant was entitled to seek repossession of the Property under Section 33 of the Housing (Scotland) Act 1988. There was a properly constituted Short Assured Tenancy with the Respondent. The Tribunal was satisfied that the statutory provisions of Section 33 of the Housing (Scotland) Act 1988 had been met namely that the Short Assured Tenancy had reached its ish (termination date);the Notice to Quit brought the contractual Short Assured Tenancy to an end, having accepted Mr Taylor's submissions on the validity of the Notice to Quit; and that the Applicant had given the Respondent notice in terms of Section 33(1)(d) of the Housing (Scotland) Act 1988 stating that possession of the property was required by 29 September 2022.

14. The terms of Section 33 of the Housing (Scotland) Act 1988 would normally entitle the Applicant to a right of mandatory repossession of the Property. In terms of Schedule 1, paragraph 3 (4) of the Coronavirus (Scotland) Act 2020 the Applicant also has to satisfy the Tribunal that it is reasonable to evict. In determining whether it is reasonable to grant the order the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal found it compelling that the Respondent had abandoned the Property and had not lived there for several years. There was no indication that despite this, the Respondent was willing to engage with the Applicant to give up the tenancy despite not living there. The balance of reasonableness in this case accordingly heavily weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.

15. In the circumstances the Tribunal considered that in terms of Section 33 of the Housing (Scotland) Act 1988 it was reasonable to grant an eviction order.

Decision

16. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

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.

Shirley Evans

28 June 2023

Legal Chair

Date

