



**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/21/0228

Re: Property at 24/3 Clearburn Gardens, Edinburgh, EH16 5ET (“the Property”)

Parties:

Ms Annie Cronin, 8 Ashley Road, Hampton, TW12 2JA (“the Applicant”)

**Ms Samantha McCaw, 24/3 Clearburn Gardens, Edinburgh, EH16 5ET (“the
Respondent”)**

Tribunal Members:

Alison Kelly (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 the order for eviction should be granted.**

On 1st February 2021 the Applicant lodged an Application with the Tribunal under Rule 66 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property.

Lodged with the application were: -

1. Copy Tenancy Agreement dated 30th March 2015 with the initial rental period being 30th March 2015 to 4th October 2015 then monthly thereafter;
2. Copy AT5 dated 30th March 2015;
3. Copy Notice to Quit dated 12th June 2020 for 4th August 2020;
4. Copy Section 33 Notice dated 12th June 2020 for 15th December 2020;
5. Section 11 Notice;

6. Recorded Delivery Proof of Service of Notice.

On 8th March 2021 a Direction was issued by the Tribunal to the Applicant as follows:

- a) The Applicant is required to be in a position to address the Tribunal on the reasonableness of granting an order for eviction.
- b) The Applicant is required to be in a position to address the Tribunal on the validity of the service of the section 33 Notice having regard to the date when it was received by the Respondent; and on whether Paragraph 10 of schedule 1 of the Coronavirus (Scotland) Act 2020 is applicable to compliance with notice periods.

On 18th March 2021 the Applicant's agent sent an email to the Tribunal with an application to amend the sum sued for to £1,613.31.

On 29th March 2021 the Tribunal received an email from Hazel Bon of the Civil Legal Assistance Office, Edinburgh, confirming that she was instructed by the Respondent.

On 13th April 2021 the Tribunal received an email from Miss Bon advising that she would not be representing the Respondent at the Case Management Discussion as she did not have instructions to do so.

Case Management Discussion

The Case Management Discussion ("CMD") took place by teleconference. The Applicant's representative, Miss Donnelly of TC Young, Solicitors, dialled in. There was no attendance by the Respondent or any representative on her behalf.

The Tribunal explained the purposes of a CMD in terms of Rule 17 of the Rules and asked Miss Donnelly deal with the matters in the Direction.

In relation to the notice question Miss Donnelly adopted the terms of her email to the Tribunal which was dated 23rd February 2021. A copy of the email is annexed to this Decision.

In relation to the question of reasonableness she submitted that the Respondent was in rent arrears to the extent of £1,613.31, and the arrears were a factor in making it reasonable to grant the eviction order. She said that the Respondent had not engaged with the Applicant or the letting agent and that it was likely that the arrears would continue to grow. She said that the Respondent had telephoned her office on 1st July 2020 acknowledging receipt of the notices. Other than that, there had been no engagement around the arrears. The arrears were mainly from missed top up payments as Housing Benefit was in payment direct to the landlord. She said that the property is a two bedroom flat and that the respondent lives there with her partner and 4 children. The Applicant is also concerned about overcrowding in the

property and that it is not being maintained properly. She said that the Respondent and her dependents leave rubbish in the common areas and her partner had been unpleasant to neighbours. The front door had been kicked in. She said that there was a leak from the flat above which had caused structural damage to a wall in the property, but the Respondent had refused to let tradespeople in to deal with the damage. The Applicant had offered alternative accommodation while the problem was dealt with, but the Respondent had refused. The property had been a family home of the Applicant and it was causing her considerable stress to have the property in a vulnerable state.

Miss Donnelly submitted that all of these factors made it reasonable to grant the eviction order and she moved that the Tribunal do so.

Findings in Fact

1. The parties entered into a Tenancy Agreement in respect of the property;
2. The Tenancy Agreement was dated 30th March 2015 with the initial rental period being 30th March 2015 to 4th October 2015 then monthly thereafter;
3. An AT5 Notice was served prior to the commencement of the tenancy;
4. The tenancy was therefore a Short Assured Tenancy in terms of section 32 of the Housing (Scotland) Act 1988;
5. Notice to Quit and section 33 Notice have been served on the Respondent;
6. The notice period was one day short of the 6 months required in terms of the amendments made to the housing (Scotland) Act 1988 by the Coronavirus (Scotland) Act 2020;
7. The Respondent receives partial housing benefit;
8. The Respondent requires to pay a top up to meet the full rental payment;
9. The Respondent is in rent arrears in the amount of £1,613.31.

Reasons for Decision

The Tribunal were prepared to accept the argument by the Applicant that the Applicant had taken all steps to serve the notice on time and that the delay was due to coronavirus/Royal Mail, and was outwith the control of the Applicant. The Respondent had telephoned to confirm receipt of the notice, and the application was not lodged with the Tribunal until February 2021. There was no detriment to the Respondent.

It is usually mandatory to grant an application under section 33 of the Housing (Scotland) Act 1988 provided that notices have been served correctly. However, Section 2 and Schedule 1 of the Coronavirus (Scotland) Act 2020 amended the legislation as follows:

Assured tenancies: eviction grounds to be discretionary

3(1)The Housing (Scotland) Act 1988 applies, in relation to a notice served on a tenant under section 19 or 33(1)(d) of that Act while this paragraph is in force, in accordance with the modifications in this paragraph.

(2)Section 18 (orders for possession) has effect as if—

(a)subsections (3) and (3A) were repealed,

(b)in subsection (4), for “Part II” there were substituted “Part I or Part II”,

(c)in subsection (4A), after the word “possession” there were inserted “on Ground 8 in Part I of Schedule 5 to this Act or”.

(3)Section 20 has effect as if subsection (6) (no discretion where landlord entitled to possession) were repealed.

(4)Section 33 (recovery of possession on termination of a short assured tenancy) has effect as if in subsection (1)—

(a)in the opening words, for the word “shall” there were substituted “may”,

(b)after paragraph (b), the word “and” were repealed,

(c)after paragraph (d) there were inserted “, and

(e)that it is reasonable to make an order for possession.”.

(5)Schedule 5 (grounds for possession of houses let on assured tenancies) has effect as if for the heading of Part I there were substituted “Certain grounds on which First-tier Tribunal may order possession in relation to the period of the Coronavirus (Scotland) Act 2020”.

The Tribunal now has to decide if it is reasonable to grant the eviction order.

The Tribunal were of the view in this case that the Applicant had established a prima facie case for eviction and that the Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. Having considered that the Respondent had not appeared at the CMD, the level of the arrears, the fact that they had accrued because the Respondent had not paid the amount she was due to pay over and above her housing benefit entitlement, and also having considered the other circumstances put forward by the Applicant’s representative, 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.

Alison Kelly

15 April 2021

Legal Member/Chair

Date