



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/21/1394

Re: Property at Flat 0/1, 435 Paisley Road West, Glasgow, G51 1QJ (“the Property”)

Parties:

Mr Harpreet Bedi and Mrs Davinder Bedi, 46 Old Slade Lane, Iver, Bucks, SL0 9DR (“the Applicant”)

Mr Stephan Mcclean, Flat 0/1, 435 Paisley Road West, Glasgow, G51 1QJ (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Melanie Booth (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988 be granted. The order will be issued to the Applicants after 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 their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicants or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 10 June 2021, the Applicants’ solicitor applied to the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for recovery of possession of the property at 63 Glover Street, Perth, PH2 0JP (“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 the Short Assured Tenancy between the parties signed and dated 28 May 2015, an AT5 signed and dated 26 May 2015, a Notice to Quit and a Section 33 Notice both dated 16 November 2020 together with a Sheriff Officers’ Execution of Service dated 17 November 2020, a rent statement and a Notice under Section 11 of the Homelessness etc. (Scotland) Act with accompanying email to Glasgow City Council dated 10 June 2021.
3. On 22 July 2021 the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 7 July 2021 the Applicants’ solicitors lodged written submissions in relation to the reasonableness of an Order of eviction being granted. The submissions were placed with the application papers.
5. On 2 August 2021, the Tribunal enclosed a copy of the application and advised parties on that a Case Management Discussion under Rule 17 of the Regulations would proceed on 3 September 2021. The Respondent required to lodge written submissions by 23 August 2021. This paperwork was served on the Respondent by Colin Wilks, Sheriff Officer, Kilmaurs on 4 August 2021 and the Execution of Service was received by the Tribunal administration.

Case Management Discussion

6. The Tribunal proceeded with the Case Management Discussion on 3 September 2021 by way of teleconference. The Applicants were represented by Ms Caldwell from TC Young, Solicitors. There was no appearance by or on behalf of the Respondent despite the teleconference starting 10 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 for both applications in her absence.
7. The Tribunal had before it a Short Assured Tenancy Agreement between the Applicants and the Respondent signed and dated 28 May 2015, an AT5 signed and dated 26 May 2015, a Notice to Quit and a Notice under Section 33 of the Housing (Scotland) Act 1988 both dated 16 November 2020, a Sheriff Officers’ Execution of Service dated 17 November 2020, a rent statement to 28 June 2021 and a Notice under Section 11 of the Homelessness etc. (Scotland) Act with accompanying email to Glasgow City Council dated 10 June 2021. The Tribunal noted the terms of these documents.

8. Ms Caldwell moved the Tribunal to grant an order for eviction under Section 33 of the Housing (Scotland) Act 1988. She submitted the Short Assured Tenancy (“the tenancy”) between the parties had reached its end, that *tacit relocation* was not operating and that no further contractual tenancy between the parties was in existence.
9. She submitted it was reasonable for an order to be granted and referred the Tribunal to her written submissions. Ms Caldwell submitted the arrears had now increased to £20151.40 from £19151.40 when the Application had been lodged. There had been no payments to account since a payment of £273.12 on 18 January 2019. The Applicants had left messages for the Respondent to contact them, but the Respondent had not done so. The Applicants had also received complaints that the Respondent had been rude to neighbours and had allowed his dog to foul in the shared garden space. The Tribunal also noted from the written submissions the Property was becoming a financial burden to the Applicants.

Findings in Fact

10. The Applicants let the Property to the Respondent under a Short Assured Tenancy dated 28 May 2015 with a termination date of 28 November 2015. The tenancy continued on a monthly basis thereafter. The AT5 was signed and dated 26 May 2015.
11. On 16 November 2020 the Applicants served on the Respondent a Notice to Quit terminating the tenancy on 28 May 2021. The Applicants also served a Notice in terms of Section 33 of the Housing (Scotland) Act 1988 indicating the Applicants intended to take possession of the Property on 28 May 2021. Both notices were served on the Respondent by Sheriff Officers on 17 November 2020.
12. In terms of Clause 3 of the tenancy agreement the Respondent agreed to pay monthly rent of £500. The Respondent has incurred arrears of rent of £20151.40. He has not made payment towards rent since 18 January 2019 when he made a payment of £273.12. The Applicants have left messages for the Respondent to contact them. The Respondent has not been in any communication with the Applicants.
13. The Respondent has allowed his dog to foul in the shared garden area and has been rude to neighbours on occasions.
14. A Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 was served on Glasgow City Council on 10 June 2021.

Reasons for Decision

15. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the written and oral submissions made on behalf of the Applicants. The Tribunal concluded that the Applicants were 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 end (termination date); the Notice to Quit brought the contractual Short Assured Tenancy to an end on 28 May 2021; and that the Applicants had given the Respondent six months' notice in terms of Section 33(1) (d) of the Housing (Scotland) Act 1988 as amended by Schedule 1 paragraph 4 (3) of the Coronavirus (Scotland) Act 2020 stating that possession of the property was required on 28 May 2021.
16. The terms of Section 33 of the Housing (Scotland) Act 1988 would normally entitle the Applicants to a right of mandatory repossession of the Property. In terms of Schedule 1, paragraph 3 (4) of the Coronavirus (Scotland) Act 2020 the Applicants also have to satisfy which 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 was satisfied that the Applicants were finding the Property a financial burden. The Respondent had not paid any rent for over three and a half years and owed the Applicants £20151.40. The Tribunal accepted that the Applicants would be put under financial stress by the Respondent's failure to pay rent. The actions of the Respondent in allowing his dog to foul and in being rude to neighbours were also relevant. The Tribunal considered this behaviour should not have to be tolerated by anyone. The balance of reasonableness in this case accordingly heavily weighted towards the Applicants. The Tribunal find it would be reasonable to grant the order.
17. 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

18. 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

1'

3 September 2021

Legal Chair

Date