



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 (“the Act”) and Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/EV/22/2954

John Clark, Carole Clark and Margaret Welsh care of Property Solutions Scotland, 38 Queen Street, Glasgow, G1 3DX (“the Applicants”) per their agents Caledonia Bureau 130-132 High Street Dumbarton G82 1PQ (“the Applicants’ Agents”)

Mr Nick Bowers, 17 Edward Drive, Helensburgh, G84 9QR (“the Respondent”)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory ground for eviction and recovery of possession having been established, it is reasonable to grant the Order sought and so the Tribunal granted the Order. The Tribunal determined that the Order should come into effect on 28 April 2023.

Background

1. By application received between 19 August 2022 and 27 September 2022 (“the Application”), the Applicants’ Agents applied to the Tribunal for an Order for possession of the Property. The Application comprised a copy of a short assured tenancy agreement between the Parties, copy Notice to Quit in terms of Section 33 of the Act together with proof of service and copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Argyll and Bute Council, being the relevant local authority.
2. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the “CMD”) was fixed for 26 January 2023 at 14.00 by telephone conference. The CMD was notified to the Parties and, in particular, was intimated to the Respondent by Sheriff Officer on 5 December 2022.

CMD

1. The CMD took place on 26 January 2023 at 14.00 by telephone conference. The Applicants did not take part and were represented by Ms. Sharon Anderson of the Applicants’ Agents. The Respondent took part and was not represented.

3. On behalf of the Applicants, Ms. Anderson confirmed the Order sought and confirmed that although the tenancy had been brought to an end on 1 June 2022, the Respondent remained in the Property.
4. The Respondent advised the Tribunal that he fully understood the reasons for the Application and that, since receiving the Notice to Quit, he has been trying to secure alternative housing and has been in contact with Argyll and Bute Council with applications for both council and housing association housing. The Respondent stated that he understood that he had the maximum points available to him and that the advice given to him by the Council was to remain in the Property until an Order is granted. With regard to his personal circumstances, the Respondent advised the Tribunal that he lives alone and is unemployed, having lost his job during the Covid pandemic period. He explained that the Property had been his family home since the 1970s and the Applicants had purchased it in 2007, with the family continuing to reside in the Property as tenants. The Respondent explained that he took over the tenancy in 2017 and had struggled with the rent payment since losing his job. His sister, who has assisted him with financial help also lost her job and was unable to continue her support. The Respondent advised that Tribunal that he has health issues and had to isolate during the Covid period which did not help financially. He explained that he had made applications for funding from Argyll and Bute Council who have been slow to assist and only recently advised him that there is no funding to assist him.
5. Ms. Anderson on behalf of the Applicants advised the Tribunal that the Applicants had been reluctant to raise the proceeding against the Respondent but considered that they had no option as rent arrears are accruing and the housing benefit received for the Respondent is £350.00 per month and the rent is £750.00 per month. The current arrears stand at almost £9,000.00. Ms. Anderson submitted that remaining in the tenancy is not financially sustainable for the Respondent. She explained that she had also applied to Argyll and Bute Council for funding for the Respondent and had been refused. With regard to the Applicants' position, Ms Anderson advised the Tribunal that the Applicants have a portfolio of properties but that she did not know their financial position.

Findings in Fact.

6. From the Application, the documents lodged and the CMD, the Tribunal made the following findings in fact:-
 - i) There was a short assured tenancy of the Property between the Parties which began in 2017;
 - ii) The tenancy was brought to an end on 1 June 2022 by service of a valid Notice to Quit in terms of Section 33 of the Act;
 - iii) The Respondent did not remove from the Property on 1 June 2022 and has remained in the Property since;
 - iv) The Respondent's financial position is that he cannot afford to make payment of the monthly rent of £750.00 and has accrued rent arrears of almost £9,000.00;
 - v) The Respondent has made application to Argyll and Bute Council for alternative rented accommodation;
 - vi) The Property is part of the Applicants' investment portfolio and they are losing income.

Issue for the Tribunal.

7. Having found that the statutory provisions for the termination of the tenancy have been complied with, the issue for consideration by the Tribunal is to determine if it is reasonable to grant the Order.

Decision and Reasons for the Decision

8. The Tribunal had regard to the whole circumstances of the matter. Notwithstanding the fact that the Application is not opposed by the Respondent, the Tribunal had regard to the fact that he has resided in the Property for a considerable time. The Tribunal had regard to the Applicants' position that the Property is part of their investment portfolio and they are entitled to receive an income from it. The Tribunal had regard to the personal circumstances of the Respondent as advised to it and took the view that the Respondent should be able to secure affordable alternative accommodation. Accordingly, in all the circumstances, the Tribunal found that it is reasonable to grant the Order sought. However, the Tribunal had regard to the difficulties encountered with Argyll and Bute Council and took the view that it is reasonable to delay the Order coming into force until 28 April 2023.

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.

K Moore

Legal Member: Karen Moore

26 January 2023

Date