



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/23/0603

Re: Property at 21 Nursery Wynd, Kilwinning, KA13 6ER (“the Property”)

Parties:

Mr Dean Wallace, 8 Kelburne, Kilwinning, KA13 6LX (“the Applicant”)

Mr Vincent Burke, 21 Nursery Wynd, Kilwinning, KA13 6ER (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Gerard Darroch (Ordinary Member)

1. Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988.

This Hearing was a Case Management Discussion fixed in terms of Rule 17 of the Procedure Rules and concerned an Application for Recovery of Possession on termination of a Short Assured Tenancy under Section 33 of the Housing (Scotland) Act 1988. The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved. The purpose of the hearing was explained to parties. It was understood a final decision on the Application could also be made. The Hearing took place by teleconference.

2. Attendance and Representation

The Applicant was present personally.

The Respondent was not in attendance. He was unrepresented. No written representations had been made by him or on his behalf. He had been serviced notice of the Hearing by Sheriff Officer on 12th May 2023.

3. Case Management Discussion Summary

The Applicant set out that she sought an Order for Repossession in terms of Section 33 of the Housing (Scotland) Act 1988. He referred to the Notice to Quit which he had served. He told the Tribunal that he sought to recover the property for financial reasons. He was now looking to sell the house as he is unable to afford it. The Applicant said he has been having to cover the mortgage payments without the rent. He cannot afford the mortgage which is £845 per month. The mortgage is a variable rate and he has not tied to a new fixed rate as his intention is to sell. The Applicant further advised the Tribunal that he has 2 other rental properties which he is retaining. His decision is that this one is unaffordable for with the highest mortgage. The applicant said he is a rope access inspector.

The Tribunal enquired about the Respondent. The Applicant said as far as he was aware the Respondent was living in the property with his family. He has not had much communication with the Respondent. He has reached out in regards the arrears and the options but there has been no response. The arrears had continued to be ongoing and given the length of time of the arrears and lack of communication he felt he had no option. The Applicant said he believed the Respondent was a self-employed carpenter. He does not know who is living with the Respondent and the house is a 4 bedroom detached property. As at 22nd July 2023 the arrears for the property are £4900.

4. Findings in Fact

- 1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and that to do so would not be contrary to the interests of the parties having regard to the overriding objective. The Tribunal had all the necessary information. The Respondent had been served by valid means and had not appeared nor made any written representations or contact with the Tribunal.**
- 2. The Tribunal was satisfied that the tenancy dated 22nd September 2017, was in terms of Section 32(1) of the 1988 Act, a Short Assured Tenancy for not less than 6 months and in relation to which a prescribed notice namely a valid AT5 had been served before creation of the short assured tenancy dated 20th August 2017.**
- 3. In terms of Section 33 of the 1988 Act the Tribunal considered that the Short Assured Tenancy had reached its end and the Notice to Quit contained the correct end date, namely the 22nd of the month.**
- 4. Further the Tribunal was satisfied that no tacit relocation was operating, no further contractual tenancy was in existence and a valid Notice to Quit had been served on the Respondent terminating the tenancy with the necessary notice given to the Respondent.**
- 5. Proof of a correct method of service of the Notice to Quit namely Sheriff Officer service had been lodged and the necessary Section 11 notice sent to the relevant local authority.**

- 6. In balancing the circumstances of both parties the Tribunal noted that the Respondent was unable to afford to continue to pay a high variable rate mortgage of £845 per month without any rent from the Respondent or payments towards the arrears. Whilst payments had at times been made the rent arrears for the property were £4900 on 22nd July 2023. The Respondent it is believed resides with his family and is self employed. The details of his circumstances were not known to the Applicant. The Tribunal found that it was reasonable to grant the Order sought.**
- 7. Accordingly in terms of Section 33 of the 1988 Act the Tribunal granted an order against the Respondent for possession of the Property.**

5. Reasons for Decision

The Tribunal considered that the Applicant had complied with the relevant statutory provisions and the question for the Tribunal was whether the Order sought was reasonable. The Tribunal found in particular his evidence to be credible and reliable. He had limited information about the Respondent. However in balancing accordingly in the circumstances the Tribunal considered it was reasonable to grant the Order.

6. 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.

Legal Member/Chair

Date 10/08/23