



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 Housing (Scotland) Act 1988 (“the 1988 Act”)

Chamber Ref: FTS/HPC/EV/23/0844

Re: Property at 11/23 Sailmaker Road, Edinburgh, EH6 7JR (“the Property”)

Parties:

Hillcrest Enterprises Limited, 1 Explorer Road, Dundee, DD2 1EG (“the Applicant”)

Ms Louise Watt, 11/23 Sailmaker Road, Edinburgh, EH6 7JR (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondent in favour of the Applicant.

Background

- 1. The Applicant seeks an order for possession of the property in terms of Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). A short assured tenancy agreement, AT5 notice, Notice to Quit, Section 33 Notice, Sheriff Officer certificate of service, Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 and rent statement were lodged in support of the application.**
- 2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 6 July 2023 at 10am and that they were required to participate. Both were provided with a telephone number and passcode. Prior to the CMD an updated rent statement was lodged**

by the Applicant.

3. The CMD took place by telephone conference call on 6 July 2023. The Applicant was represented by Ms Donnelly, solicitor. The Respondent did not participate and was not represented. A related application under reference CV/23/0848 was also discussed.

Case Management discussion

4. The Tribunal noted that the application form referred to incidents of antisocial behaviour at the property and indicated that the Applicant does not believe that the Respondent is residing there. It therefore appeared that the application may not have been validly served. Ms Donnelly told the Tribunal that there had been a number of incidents of antisocial behaviour, as outlined in the application form, culminating in a drugs raid by the police in August 2022. After that, neighbours reported seeing the Respondent removing bags from the property. Housing benefit payments stopped in September 2022. The Applicant made enquires with the Local Authority but were not provided with any information as this had not been authorised by the Respondent. A trace report was obtained but did not disclose a new address. Ms Donnelly referred the Tribunal to Rule 6 of the Tribunal Rules which states that a document is deemed to have been served if it is sent to the proper address of the person. Proper address is not defined in the Rules but is defined in section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 as the last known address of the person. Furthermore, the Respondent had not returned the keys to the property or told the Applicant that she had moved out. There had also been successful service of the application by Sheriff Officer, as evidenced by the certificate of service. After a brief adjournment the Tribunal concluded that the application had been validly served and proceeded to consider the application.
5. Ms Donnelly advised the Tribunal that in addition to the incidents of antisocial behaviour and the concern that the Respondent is not residing at the property, there are rent arrears of £8256.78. The account went into arrears at the end of 2019. It was thought that housing benefit had reduced as a result of a part time job. Efforts were made to assist the Respondent and a repayment arrangement was made, but not maintained. Housing benefit was suspended in September 2022, for reasons unknown, and no rent has been paid since that time. Ms Donnelly told the Tribunal that the Respondent is the sole occupier of the property. She is aged 48 and believed to be unemployed. The Applicant is a housing association which means that there is more support for tenants than would usually be available in the private sector. However, she has failed to engage with them.

Findings in Fact

6. The Applicant is the owner and landlord of the property.

7. The Respondent is the tenant of the property in terms of a short assured tenancy agreement.
8. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondents on 28 November 2022
9. The Respondent and visitors to the property have engaged in antisocial behaviour.
10. The Respondents has incurred rent arrears of £8256.78.
11. The Respondent has failed to engage with the Applicant's efforts to establish if she is living at the property and to address rent arrears.

Reasons for Decision

12. The application was submitted with a short assured tenancy agreement and two AT5 Notices. The initial term of the tenancy was six months from 1 June 2016 until 2 December 2016 with a provision that it would continue thereafter on a month to month basis if not terminated.
13. Section 32 of the 1988 Act states "(1) A short assured tenancy is an assured tenancy - (a) which is for a term of not less than 6 months; and (b) in respect of which a notice is served as mentioned in subsection (2) below. (2) The notice referred to in subsection (1)(b) above is on which - (a) is in such form as may be prescribed; (b) is served before the creation of the short assured tenancy; (c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under the tenancy; and (d) states that the assured tenancy to which it relates is to be a short assured tenancy."
14. The Tribunal is satisfied that the tenancy agreement between the parties was for an initial term of 6 months and therefore meets the requirements of Section 32(1) of the 1988 Act. The Tribunal is also satisfied that an AT5 Notice was given to the Respondent prior to the creation of the tenancy. In the circumstances, the Tribunal determines that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act.
15. From the documents submitted with the application, the Tribunal is satisfied that the Applicant served a Notice to Quit and Section 33 Notice on the Respondents on 28 November 2022. The Notice to Quit called upon the Respondent to vacate the property on 2 February 2023, an ish date. The Notice contains the information prescribed by the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and complies with the terms of Section 112 of the Rent (Scotland) Act 1984. The Tribunal is satisfied that the Notice to Quit is valid and that the tenancy contract has been terminated. The Section 33 Notice was also served on 28 November 2022 and gave the Respondent 2 months notice that the Landlord wished to recover

possession of the property. A Section 11 Notice was submitted with the application, with evidence that it was sent to the Local Authority. The Applicant has therefore complied with Section 19A of the 1988 Act.

16. Section 33 of the 1988 Act, (as amended by the Coronavirus (Recovery and Reform) (Scotland) Act 2022) states “(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied – (a) that the short assured tenancy has reached its finish; (b) that tacit relocation is not operating; (d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and (e) that it is reasonable to make an order for possession” Subsection 2 states “The period of notice to be given under subsection (1)(d) above shall be – (1) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period; (ii) in any other case, two months”. The Tribunal is satisfied that the tenancy has reached its finish and, as the Applicant has served a valid Notice to Quit, that tacit relocation is not operating. A valid notice in terms of section 33(d) has also been served on the Respondents, giving at least two months’ notice that the Applicant required possession of the property.
17. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession, in terms of Section 33(e) of the 1988 Act.
18. The Tribunal had regard to the following: -
 - (a) The Respondent did not participate in the CMD or notify the Tribunal whether the application is opposed.
 - (b) The Respondent has engaged in antisocial behaviour at the property and has allowed visitors to do so.
 - (c) The Respondent has incurred rent arrears of £8256.78 and has failed to engage with the Applicant when they have attempted to contact her regarding the arrears.
 - (d) There is some evidence to suggest that the Respondent may not be occupying the property.
19. For the reasons specified, the Tribunal is satisfied that it would be reasonable to grant the application.
20. The Tribunal is satisfied that the Applicant has complied with the provisions of the 1988 Act and that it would be reasonable to grant the order.

Decision

21. The Tribunal determines that an order for possession of the property should be granted against the Respondent.

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.

Josephine Bonnar

Legal Member

6 July 2023