



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 1988 Act”) and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/23/1342

Re: Property at 45 Beechbank Crescent, East Calder, EH53 0DX (“the Property”)

Parties:

Mrs Kirsti Di Ciacca, Mr Ernest Di Ciacca, The Shambles, Skivo, Livingston, EH54 9AN (“the Applicant”)

Mr Ormond Dearn, Mrs Claire Dearn (Nee Mills), 45 Beechbank Crescent, East Calder, EH53 0DX (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Mike Scott (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for the order for possession should be granted.

Background

1. By application received on 26 April 2023, the Applicant sought an order under Section 33 of the Housing (Scotland) Act 1988 (“the Act”) for possession of the Property on termination of a Short Assured Tenancy. The application was made in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). Supporting documentation was submitted with the application, including a copy of the Tenancy Agreement, AT5, Notice to Quit, Section 33 Notice and Section 11 Notice.

2. On 22 May 2023, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance in respect of the application in terms of Rule 9 of the Regulations.
3. A Case Management Discussion (“CMD”) was fixed for 10 July 2023 at 2pm. The application and details of the CMD fixed were served on the Respondent by Sheriff Officer on 7 June 2023. In terms of said notification, the Respondent was given an opportunity to lodge written representations. No representations were lodged prior to the CMD.

Case Management Discussion

4. The CMD took place on 10 July 2023 by telephone conference call. The CMD was attended by the first-named Applicant, Mrs Kirsti Di Ciacca who was appearing on behalf of both Applicants. The Tribunal delayed the commencement of the CMD until 2.05pm to give the Respondent an opportunity to join late but the Respondent did not attend.
5. Following introductions and introductory remarks by the Legal Member, Mrs Di Ciacca was asked to confirm the Applicant’s position in relation to the application for eviction and it was noted that the Applicant wished to proceed. Reference was made to the terms of the application itself and the supporting documentation lodged with the Tribunal. Mrs Di Ciacca explained the background to the Tribunal application and the current position. She also answered questions from both Tribunal Members.
6. Mrs Di Ciacca stated that she and her husband are hoping to retire this year. Her husband is self-employed and is 60 years old. However, he suffers from osteoarthritis and is awaiting a knee operation and this has resulted in them bringing forward his retirement. She explained that they are going to have to sell their own property soon too and down-size as a consequence. In relation to this Property, there is a mortgage over the Property which comes to an end in May 2024 when they will require to pay back the capital. It is unlikely, given their age, that they would be able to get a further mortgage. They had also considered trying to sell the Property to another landlord, which would allow the Respondent to stay in place but this has not been possible in the current market as they have had no interest. Accordingly, they require to sell the Property as soon as they can. Mrs Di Ciacca confirmed that they own three let properties, all of which are mortgaged, and that it is really her job to manage these. She explained that they will all require to be sold to enable them both to retire, hopefully this year, but that there is not the same urgency with the other two let properties as this one, given the mortgage situation. They had been hoping that all of their tenants would move on naturally as they did not wish to have to evict anyone. She explained that they are not making much income from the properties now, particularly in the current market, and that, financially speaking, they have little option but to sell up.
7. Mrs Di Ciacca stated that they have had no issues with the Respondent as tenants and that they continue to pay their rent. She explained their position to the Respondent, Mrs Dearn, in February 2023 before serving notice and

confirmed that the Respondent had been quite upset. Mrs Di Ciacca is aware that they have been tenants for a long time and also that they may not be finding it particularly easy to find somewhere comparable for the rental they are currently paying. It was explained that the initial rent in 2011 was £550 per month and that the monthly rental has not gone up much at all over the years, being currently £625 per month. She confirmed that both Respondents are working, as far as she is aware, and that they have two children of school age. Having been advised by the Tribunal that it requires to be satisfied on the reasonableness of granting an eviction order, Mrs Di Ciacca referred to the background information she had provided and also indicated that she does not really know what they would do if the Tribunal were not to grant an eviction order as they have no other viable options.

8. The Tribunal adjourned the proceedings briefly in order to deliberate in private and, on re-convening, the Legal Member advised that the Tribunal had decided to grant the eviction order sought and that the detailed written Decision would be issued to parties shortly. The timescales for the order being issued and thereafter being enforceable were also explained to the Applicant.

Findings in Fact

1. The Applicant is the joint owner and landlord of the Property.
2. The Respondent is the tenant by virtue of a Short Assured Tenancy which commenced on 24 June 2021.
3. The Applicant ended the contractual tenancy by serving a Notice to Quit and Section 33 Notice on 22 February 2023, specifying the end of the notice period (2 months) as 25 April 2023, an ish date in terms of the lease. Both notices were in the correct form, provided sufficient notice and were served validly on the Respondent by way of Sheriff Officer.
4. The Respondent has remained in possession of the Property following expiry of the notice period.
5. This application was lodged with the Tribunal on 26 April 2023, following expiry of the notice period.
6. The Respondent has not contested the application, either by way of lodging written representations or by attending the CMD.

Reasons for Decision

1. The Tribunal was satisfied that the Respondent had been properly and timeously notified of the application and CMD and had therefore had the opportunity to contest the eviction order sought and/or to provide the Tribunal with information on their own behalf, but had not done so.
2. The Tribunal was satisfied that pre-action requirements including the service of the Notice to Quit and Section 33 Notice in terms of the 1988 Act had been

properly and timeously carried out by the Applicant prior to the lodging of the Tribunal application. Section 33(1) of the Act states that an order for possession shall be granted by the Tribunal if satisfied that the short assured tenancy has reached its finish; that tacit relocation is not operating; that the landlord has given to the tenant notice stating that he requires possession of the house; and that it is reasonable to make an order for possession. The Tribunal was satisfied that all requirements of Section 33(1) had been met.

3. As to reasonableness, the Tribunal considered all documentation before it and the oral submissions on behalf of the Applicant at the CMD. With reference to the Applicant's position, the Tribunal was of the view that Mrs Di Ciacca put forward the Applicant's position in a candid and straightforward manner and had no reason to disbelieve the stated reasons for the Applicant's application for an eviction order and decision that the Property must be sold as soon as possible and, in any event, before the mortgage matures in May 2024. The Tribunal understood the personal and financial circumstances of the Applicant as put forward by Mrs Di Ciacca. It was apparent to the Tribunal that the Applicant was not without sympathy to the Respondent's position, that they would have preferred not to have to seek an eviction order and also that they had found the process stressful and upsetting. The Tribunal noted from Mrs Di Ciacca the length of the tenancy, that the Respondent had been a good tenant, that the parties appeared to have been on good terms throughout and the personal and financial circumstances of the Respondent as far as known to Mrs Di Ciacca. The Tribunal was, however, persuaded that although there would inevitably be upheaval for the Respondent and their children as a consequence of an eviction order being granted, the Respondent had chosen not to contest the application nor to provide the Tribunal with any information on their own behalf as regards their position. The Respondent had had notice since February 2023 and would still have a further opportunity to secure alternative accommodation, if they had not already done so, before the eviction order could be enforced. In all of the circumstances, the Tribunal considered that the likely impact on the Respondent of granting the eviction order was outweighed by the impact on the Applicant were the order not to be granted. The Tribunal was satisfied that it was reasonable to grant the order sought.

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.

Nicola Weir

Legal Member/Chair:

Date 10th of July 2023