



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 19 and 33 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/23/1451

Re: Property at 4 Yew Drive, Springburn, Glasgow, G21 4EF (“the Property”)

Parties:

Mr Sunil Marwaha, 4 Birch Grove, Glasgow, G77 6NJ (“the Applicant”)

Ms Isobel Chesney, 4 Yew Drive, Springburn, Glasgow, G21 4EF (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondent)

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

On 8th May 2023 the Applicant lodged an Application with the Tribunal under Rule 66 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property.

Lodged with the application were: -

1. Short Assured Tenancy Agreement dated 28th October 2017 and initially running from 28th October 2017 to 29th April 2018, and with monthly rent of £525
2. AT5 Notice dated 28th October 2017;
3. Notice to Quit dated 27th February 2023 for 29th April 2023
4. Section 33 Notice dated 27th February 2023 for 29th April 2023
5. Sheriff Officer’s Certificate of Service of 3 and 4 dated 28th February 2023
6. Section 11 Notice;

The Application was served on the Respondent by Sheriff Officers on 16th June 2023.

Case Management Discussion

The Case Management Discussion (“CMD”) took place on 24th July 2023 by teleconference. The Applicant was represented by Mr Livingstone of the letting agent, Landlord Specialist Services Scotland Ltd.. There was no attendance by the Respondent, nor any representative on her behalf.

The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules.

Mr Livingstone sought an order for eviction in terms of sections 19 and 33 of the Housing (Scotland) Act 1988. He said that the notices had been served and tacit relocation was not operating. He said that the Applicant needed to sell the property, and some renovation would be required before that could happen.

The Tribunal were satisfied that the ground had been established and asked Mr Livingstone to address the Tribunal on reasonableness.

Mr Livingstone said that the property was occupied by the Respondent. She had no dependent children. She did live with her adult daughter, who has recently moved out. He was not aware of any disabilities that would require her to remain in the accommodation. He said she worked part time and was in receipt of a local housing allowance and a shortfall payment. She had contacted the agency after receiving the Notice to Quit to ask if she would be evicted on the day mentioned in the notices. Mr Livingstone said that he had explained the process to her, and she had seemed satisfied. Since the notices were served Mr Livingstone has received requested references from housing associations on the Respondent’s behalf.

Mr Livingstone said that the Applicant was experiencing financial hardship, and possibly bankruptcy, and would have to sell the property. Some renovations were required, but due to the Applicant’s financial situation he could not give a timescale as to when these would be carried out. The Applicant had a buy to let mortgage on the property, which has now expired and he had been unable to secure a favourable rate to remortgage. Mr Livingstone was not aware of the Applicant owning any other rental properties.

Findings in Fact

1. The parties entered into a Short Assured Tenancy Agreement in respect of the property;
2. The tenancy commenced on 28th October 2017, with the initial term being from 28th October 2017 to 29th April 2018, and monthly thereafter;
3. Notice To quit and Section 33 Notice were served timeously and correctly;
4. The Application was served on the Respondent by Sheriff Officer on 16th June 2023;

5. The Applicant is suffering financial hardship in relation to his ownership of the property;
6. The Respondent lives alone in the property;
7. The Respondent has no disabilities that the Applicant is aware of;
8. The Respondent works part time and receives some benefits;
9. The Applicant has been asked to give references to housing associations on behalf of the Respondent.

Reasons For Decision

The Tribunal were satisfied that the ground of eviction was established.

Section 44 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022 states:

Assured tenancies: discretionary eviction grounds

(1)The Housing (Scotland) Act 1988 is modified as follows.

(2)In section 18 (orders for possession)—

(a)subsections (3) and (3A) are repealed,

(b)in subsection (4), for “Part II” substitute “Part I or II”,

(c)in subsection (6)(a), the words “or Ground 8” are repealed,

(d)in subsection (8), for “subsections (3A) and (4A)” substitute “subsection (4A)”.

(3)In section 19 (notice of proceedings for possession), subsection (5) is repealed.

(4)In section 20 (extended discretion of First-tier Tribunal in possession claims)—

(a)in subsection (1), for “Subject to subsection (6) below, the” substitute “The”,

(b)subsection (6) is repealed.

(5)In section 33(1) (recovery of possession on termination of a short assured tenancy)—

(a)in the opening words, for “shall” substitute “may”,

(b)after paragraph (b), the word “and” is repealed,

(c)after paragraph (d) insert “, and

“(e)that it is reasonable to make an order for possession.”.

(6)In schedule 5 (grounds for possession of houses let on assured tenancies)—

(a)in Part I, Ground 8 is repealed,

(b)the heading of Part I becomes “Certain grounds on which First-tier Tribunal may order possession”,

(c)the heading of Part II becomes “Further grounds on which First-tier Tribunal may order possession”.

The Tribunal now has to decide if it is reasonable to grant the eviction order.

The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Respondent did not enter appearance and therefore there was no dispute about the information provided by Mr Livingston. The Tribunal accepted that the Applicant was experiencing financial hardship as a result of owning the property. The Respondent appeared to have approached housing associations for housing. The Tribunal considered in those circumstances that it was reasonable to grant the order.

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.

Alison Kelly

24th July 2023

Legal Member/Chair

Date