



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/22/1200

Re: Property at 2A Woodcroft Avenue, Largs, KA30 9EW (“the Property”)

Parties:

Siena Development Ltd, 6 Waterside Street, Largs, KA30 9LN (“the Applicant”)

Ms Alison Doull, 2A Woodcroft Avenue, Largs, KA30 9EW (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a possession order be made in terms of section 33 of the Housing (Scotland) Act 1988 and found that it was reasonable to grant the order.

Background

1.This application for a possession order in terms of rule 66 of the tribunal rules of procedure was first lodged with the tribunal on 27th April 2022 and accepted by the tribunal on 13 June 2022. a case management discussion was fixed for this application and a related payment order application with reference FTS/HPC/CV/22/1202 for 24th August 2022 at 10:00 am.

The Case Management Discussion

2.The applicant did not attend the case management discussion but was represented by Miss Bruce of Complete Clarity solicitors. The Respondent was not present but was represented by Mr Meek of CHAP, a housing and welfare advice charity.

3. The tribunal had sight of both applications, a paper apart, a rent table, a statement from the Applicant’s bank, a notice in terms of section 11 of the Homelessness et

cetera (Scotland) Act 2003 together with an e-mail intimating this notice, a Notice to Quit, a Form AT6, a Form AT5, an execution of service in respect of the Notice to Quit and the AT6 and a guarantee agreement.

4. Miss Bruce advised the Tribunal that the possession order application related to a property owned by the Applicants. This was a company which was essentially set up by her clients a Mr and Mrs Lochhead who set up the company for the sole purpose of property rental to create an additional source of income. The Applicants had entered into a short, assured tenancy with the Respondent on 10th August 2016 to run until 11th February 2017. The tenancy was to continue on a monthly basis after that date if not brought to an end by either party. The monthly rent payable in advance is £650.

5. Miss Bruce submitted that the tenancy had been properly brought to an end by the service of an AT6 notice together with a notice to quit, giving notice to the Respondent that she required to leave the property by 11th April 2022. In her submission she said appropriate notice of 6 months had been given and tacit relocation was not operating.

6. Miss Bruce addressed the tribunal in relation to the reasonableness of making a possession order. She had lodged a fresh payment order application showing that the current rent arrears stood at £12,100 pounds. Only two rent payments had been made since August 2021 and the arrears were substantial. She explained that these rental arrears were having an effect on her clients. Whilst the rent was not being paid, they required to meet the cost of the mortgage over the property, insurances and storage costs. The failure to pay rent was causing them financial hardship. The Respondent had failed to engage with them and had proved difficult to contact. Over and above that her clients had in fact separated with Mr Lochhead living in a separate rented property which was not sustainable financially on a long-term basis. In addition, Mrs Lochhead suffered from a progressive illness, and this had deteriorated due to stress in connection with the tenancy.

7. Attempts had been made mainly by way of text messages to contact the Respondent during the tenancy when arrears started to build up at the property. E-mail communication had also been attempted. Miss Bruce submitted that communication had broken down or that the Respondent was reluctant to engage or seldom responded to messages.

8. Miss Bruce was seeking a possession order on the basis that the appropriate statutory notices had been served on the Respondent and that it was reasonable in the circumstances of the high level of rent arrears and her clients' circumstances that the order be granted.

9. Mr Meek who appeared on behalf of the Respondent was instructed not to present any dispute to the possession order being granted. He indicated that the Respondent was receiving assistance from the local authority in being rehomed. Although he had seen the application and papers, he had not seen the new payment order application with the increased sum said to be due by way of rent arrears, but he did not dispute that the current rent arrears stood at £12,100 pounds. Mr Meek had no further instructions and had no further information on the situation other than that which he had given.

10. The tribunal legal member raised an issue regarding the format of the AT6 notice. This notice was not in the format usually seen in terms of a notice under section 33 of the Housing (Scotland) Act 1988. Miss Bruce submitted that the form, whatever the format, gave the required information that the applicants were seeking a possession order and gave notice that the tenant was required to vacate the property by an end date of the monthly rolling tenancy. The notice to quit also referred to the requirement to leave the property in terms of section 33 of the 1988 Act and gave the same date as the AT6. In these circumstances Miss Bruce submitted that the requirements of the Act in terms of clear notice to the Respondent had been met. Mr Meek had no instructions to take any issue with the format of the notices served on the Respondent.

11. The tribunal members considered that they had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

12. The Applicants entered into a short, assured tenancy agreement with the Respondent on 10th August 2016 to run until 11th February 2017, and to continue after that date on a one month rolling basis if neither party brought to the tenancy to an end.

13. The monthly rent payable in advance for the property under the tenancy agreement is £650 pounds.

14. On the 24th of September 2021 a document complying with the terms of section 33 of the Housing (Scotland) Act 1988 was served by sheriff officer on the Respondent. On the same date a notice to quit was also served on the Respondent.

15. Each of these notices complied with the statutory requirements and required the Respondent to leave the property by 11 April 2022, a monthly end date for the tenancy

16. A notice in terms of section 11 of the Homelessness et cetera (Scotland) Act 2003 was intimated to the relevant local council in connection with his application.

17. The short, assured tenancy has reached its end

18. Tacit relocation is not operating.

19. The Applicants have given appropriate notice to the Respondent that they require possession of the property.

20. The applicants are suffering financial hardship as a result of substantial rent arrears which have accrued during the tenancy which currently stand at £12100.

21. One of the Applicants who is an office bearer of the Applicant company suffers from a progressive illness which has worsened due to the stress caused by issues connected to the tenancy.

Reasons for Decision

22. The Tribunal members considered that it was appropriate to make an order for possession of the property in relation to this application. The terms of section 33 of the Housing (Scotland) Act 1988 had been complied with, the tenancy had been brought to an end and tacit relocation was not in operation. As to the reasonableness of making the order it was clear that substantial rent years accruing at the property are having an impact on the married couple who run the Applicant company. Although the Respondent was represented at the case management discussion, no issue was taken

with the request for a possession order, or the terms of the Notices served or indeed the level of rent arrears accrued. In these circumstances the Tribunal considered that it is reasonable to make a possession order for the property.

Decision

The Tribunal granted a possession order for the property in terms of Section 33 of the Housing (Scotland) Act 1988 and found 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.

V Bremner

Legal Member/Chair

24.8.22

Date
