



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/22/0976

Re: Property at Flat 2/3, 11 Jeanfield Road, Perth, PH1 1PG (“the Property”)

Parties:

Mrs Lorna Watt, Mr James Watt, Inyanga, Den Road, Scone, PH2 6PY (“the Applicant”)

Mr David Donaldson, Flat 2/3, 11 Jeanfield Road, Perth, PH1 1PG (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Angus Lamont (Ordinary Member)

Decision

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

Background

1. An application was received by the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The application was submitted under Rule 66 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based the Applicant seeking an order for recovery of possession in terms of section 33 of the Act.
2. The Tribunal had before it the following documents:
 - a) Application dated 4th April 2022;
 - b) Short Assured Tenancy Agreement signed 31st August 2012;
 - c) Form AT5 signed by the parties on 31st August 2012;
 - d) Notice to Quit dated 30th July 2021 which required vacant possession as at 1st February 2022 with sheriff officer certificate of execution of service

- dated intimation dated 7th September 2021 also servicing the section 33 notice;
- e) Section 33 Notice dated 30th July requiring vacant possession as at 1st February 2022;
 - f) Section 11 Notice noting date of raising proceedings 21st March 2022;
3. On 13th June 2022, all parties were written to with the date for the Case Management Discussion (“CMD”) of 26th July 2022 at 10am by teleconferencing. The letter also requested all written representations be submitted by 4th July 2022.
 4. On 14th June 2022, sheriff officers served the letter with notice of the CMD date and documentation upon the Respondent by letterbox service. This was evidenced by Certificate of Intimation dated 14th June 2022.
 5. This case is conjoined with CV/22/0974.

Case Management Discussion

6. The Tribunal held a Case Management Discussion (“CMD”) on 26th July 2022 at 10am by teleconferencing. The Applicant was not present but were represented by Ms Vikki Carver, trainee solicitor, Macnabs LLP. The Respondent was present.
7. Ms Carver submitted that the application for eviction was still being sought. The notices had all been served correctly. She noted that in terms of reasonableness that the Respondent is in rent arrears which now total £2018.95. The case CV/22/0794 is seeking an order for £1018.95. Since that point there have been four more rent payments due. There has only been one payment of £500 made. Ms Carver noted that there have been attempts at payment agreements but that these have not been maintained.
8. The Respondent is not opposing the Order. He accepts that the paper work has been served correctly and that he has accrued arrears. He wishes to pay his arrears in instalments. He has more hours at his work so should be able to maintain payments. He has been allocated a property in the social housing sector. He has an entry date of 1st September 2022.
9. The Tribunal noted that the AT5 was signed on 31st August 2012 which was the same date that the lease was signed. The tenancy is detailed as starting on 28th August 2012. When asked upon this point the Respondent believed that he did not gain occupation of the Property until after he signed the lease and the AT5. The Tribunal took this to mean that the lease was created on 31st August 2012 albeit that the lease stated the start date as 28th August 2012. This meant that the section 33 notice was not invalid. Ms Carver noted the Tribunal’s initial concern but given the information that the Respondent had told the Tribunal she had nothing further to add.
10. The Tribunal was satisfied that it was reasonable to grant the Order for eviction.

Findings in Fact

11. A Short Assured Tenancy was created on 31st August 2012 when the parties signed the tenancy agreement and the Respondent took occupation of the tenancy albeit that the lease states that the start date of the tenancy was 28th August 2012. The rent payments of £350 are due on the 1st day of each month.
12. The Respondent was not opposed to the Order being granted. He has been allocated a property in the social housing sector.
13. All notices were legally served.

Reasons for Decision

14. The Tribunal was satisfied that there were no other issues of reasonableness before them which prevented the Order being granted, that the notices had been served in an appropriate manner and that a Short Assured Tenancy had been entered into by the parties. Given this the Tribunal was satisfied all appropriate paperwork had been served the Order for repossession was granted.

Decision

15. The Applicant is entitled to an Order for recovery of possession.

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.

G. M

26th July 2022

Legal Member/Chair

Date