



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 Reference; FTS/HPC/EV/22/2471

Property at 86 Orchard Park Avenue, Giffnock, Glasgow, G46 7BE (“the Property”)

Parties:

Mr Thomas Whitelaw, 102 Levensgarth Avenue, Fulwood, Preston, PR2 9FB (“the Applicant”)

Mr Derek Carlin, Carrie Anne McClure, 86 Orchard Park Avenue, Giffnock, Glasgow, G46 7BE (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondents 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, copy Notices to Quit, Section 33 Notices, Sheriff Officer certificates of service, and Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 were lodged in support of the application.
2. A copy of the application and supporting documents were served on the Respondents by Sheriff Officer on 22 September 2022. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 2 November 2022 at 10am and that they were required to participate. Both were

provided with a telephone number and passcode. Prior to the CMD the Applicant lodged additional documents, including a series of text or WhatsApp messages relating to a problem with the boiler and an affidavit from the Applicant.

3. The CMD took place by telephone conference call on 2 November 2022 at 10am. The Applicant was represented by Mr Gordon, solicitor. Both Respondents participated.

Case Management discussion

4. Mr Carlin told the Tribunal that the application is opposed. In response to questions from the Tribunal, he said that they Respondents have lived at the property since 2014. Initially they were given a new tenancy agreement every year. However, they have not been asked to sign any new documents for several years. He confirmed that he thinks that the tenancy agreement lodged with the application, dated 1 September 2022, is the last one which was signed. Mr Carlin also told the Tribunal that the Applicant is not a registered landlord. In response to further questions from the Tribunal he stated that the Notices to Quit and section 33 notices were served by Sheriff Officer on 19 April 2022. A different notice was also served by Sheriff officer before this. He took it to the Local Authority who told him that it was an illegal notice.
5. The Tribunal noted that the affidavit lodged by the Applicant states that a notice to leave was previously issued, in error. Mr Gordon advised the Tribunal that he could not provide any additional information about that as he did not represent the Applicant at the relevant time
6. Mr Carlin advised the Tribunal that the Respondents are the only occupants of the property. Their children are grown up and have moved out. Both Respondents are full time students, each in receipt of a monthly bursary of £510. This is their sole income, except for some small payments from Universal Credit. They do not receive any other benefits or any income from employment. Both are due to finish college in May 2023. They were previously in receipt of universal credit which included housing costs. In response to questions from the Tribunal, Mr Carlin confirmed that there are rent arrears and that the figure provided by the Applicant of £7200 is correct. He stated that there are two reasons for the arrears. They cannot currently afford to pay the rent due in terms of the tenancy agreement. However, they do not think that the rent is due because of the condition of the property. When they moved in, there were issues with the boiler, which was very old. In 2018 it was condemned by a gas engineer. It took the Applicant three months to replace the boiler. Since then, there have been issues with the new boiler and central heating, and no gas safety check has ever been carried out. There are other repair issues at the property. The windows are defective and there are problems with the electrics. When asked, Mr Carlin said that he had not considered a repairing standard application to the Tribunal, as he was not aware of this remedy. He has contacted the Applicant on numerous occasions and been told that repairs

would be carried out. However, he was verbally abused when he recently phoned him.

7. Mr Carlin told the Tribunal that his GP has diagnosed mild depression, caused by the issues with the property, but he has not been prescribed any treatment. He confirmed that the Respondents have applied for housing from the Local Authority and are on a waiting list. However, they have not yet been offered a property. They cannot afford to rent again in the private sector. They are also concerned that they could end up in temporary bed and breakfast accommodation, if they are evicted. They have three dogs and would not be able to keep the dogs if this was to happen.
8. Mr Gordon told the Tribunal that the Applicant has retired and, as he does not intend to return to live in the property, he wishes to sell it. He does not have a mortgage over the property, which he inherited from his late mother. He does not have any other rental properties. Mr Gordon was unable to comment on the condition of the property as he had not been aware that this issue would be raised, so had not taken instructions on it. However, he advised the Tribunal that the Respondents could have made a repairing standard application to the Tribunal under the Housing (Scotland) Act 2006. He also stated that the condition of the property is not relevant to the present application. Mr Gordon advised the Tribunal that as the Landlord intends to sell, and given the level of rent arrears, it would be reasonable to grant an order for possession. He also stated that, as the application is being made on a non-fault ground, the Respondents will not be found intentionally homeless by the Local Authority and can expect to be re-housed.
9. When asked whether the Tribunal should consider ordering a delay in enforcement, if the application is granted, Mr Carlin said that a delay until the end of January should be granted, as finding accommodation over the Christmas period would be very difficult. Mr Gordon said that the Applicant was looking to recover possession as soon as possible.

Findings in Fact

10. The Applicant is the owner and landlord of the property.
11. The Respondents are the tenants of the property in terms of a short assured tenancy agreement.
12. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondent on 19 April 2022.
13. The Applicant intends to sell the property.
14. The Respondents have incurred arrears of rent of £7200.

15. The Respondents have applied for alternative accommodation from the Local Authority.
16. The Respondents have insufficient income to pay the rent due in terms of the tenancy agreement.

Reasons for Decision

17. The application was submitted with a short assured tenancy agreement and AT5 Notice. The initial term of the tenancy was 1 September 2016 until 1 September 2017, with a provision that it continued on a month to month basis thereafter.
18. 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.”
19. The Tribunal is satisfied that the tenancy agreement between the parties was for an initial term of 12 months and therefore meets the requirements of Section 32(1) of the 1988 Act. The Tribunal is also satisfied that AT5 Notice was given to the Respondents 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.
20. 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 Respondent on 19 April 2022. The Notice to Quit called upon the Respondents to vacate the property on 1 July 2022, 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 19 April 2022 and gave the Respondents more than 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 sent to the Local Authority. The Applicant has therefore complied with Section 19A of the 1988 Act.
21. Section 33 of the 1988 Act, as amended by the Coronavirus (Scotland) Act 2020, 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 Respondent, giving at least two months’ notice that the Applicant required possession of the property.

22. 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.
23. The Tribunal was provided with an affidavit from the Applicant which states that the Applicant intends to sell the property. This was confirmed by his representative who explained that the Applicant has retired, that he resides in England and does not intend to return to Scotland or reside in the property. He inherited the property from his late mother. The Tribunal also noted that there are substantial arrears of rent, which are not disputed, and that no payments have been made to the rent account for almost a year.
24. The Tribunal notes that the Applicant appears to have taken a somewhat casual attitude to his obligations as landlord. He only recently applied to be a registered landlord. Furthermore, although no evidence was provided by the Respondents, there appear to be a number of repairing standard issues at the property. These have been reported to the Applicant but not addressed. However, the Tribunal is not persuaded that the failure to carry out repairs is relevant to the issue of reasonableness or the reason for non-payment of rent. This appears to have been triggered by the service of the invalid notice to leave. There also appears to have been a breakdown in the relationship between the parties. The Tribunal also notes that the Respondents have very limited income from bursaries, which have to cover all of their living and travel costs. It therefore appears that Respondents cannot currently afford the rent of £650 per month. In fact, they have stopped paying rent altogether.
25. The Tribunal also considered the fact that the Respondents have already applied for more affordable, alternative accommodation from the Local Authority. There are no dependent children in the house and no significant health issues or disabilities. The Respondents have three dogs and may have to make alternative arrangements for them, if they must spend a period of time in temporary accommodation. However, in the circumstances and having regard to the rent arrears and the Applicant’s intention to sell the property, the Tribunal is not satisfied that the Respondents’ concern about their dogs is a valid reason for refusing to grant the order.

26. In the circumstances, the Tribunal determines that it is reasonable to grant the order for possession.

27. As the Respondents have not yet secured alternative accommodation, and as they will require to make arrangements for their dogs, the Tribunal is satisfied that it should order a delay in enforcement of the order for possession in terms of Rule 16A of the Tribunal procedure Rules 2017, until 30 January 2022.

Decision

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

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

2 November 2022