



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014.

Chamber Ref: FTS/HPC/EV/23/0187

Re: Property at 11 Millgate Crescent, Caldercruix, Airdrie, North Lanarkshire, ML6 7QY (“the Property”)

Parties:

Mrs Maggie Cameron (Nee Dudley), Mr John Cameron, 19 Flagstaff Walk, Plymouth, PL1 4SH (“the Applicants”)

Mrs Audrey Henderson, 11 Millgate Crescent, Caldercruix, Airdrie, North Lanarkshire, ML6 7QY (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 11 Millgate Crescent, Caldercruix, Airdrie, North Lanarkshire, ML6 7QY be granted. The order will be issued to the Applicants after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with her goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicants or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

- 1. By application dated 19 January 2023, the Applicants applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for recovery of possession of the property at 11 Millgate Crescent, Caldercruix, Airdrie, North Lanarkshire, ML6 7QY (“the Property”) in terms of Rule 66 the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).**

2. The application was accompanied by a copy of a Short Assured Tenancy between the parties dated 13 October 2017, an AT5 dated 12 October 2017, a Notice to Quit and a Section 33 Notice both dated 31 October 2022 together with a Sheriff Officers' Execution of Service dated 31 October 2022, letters dated 18 January 2023 from Adobe Estate Agents and from MacRoberts, Solicitors and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2002 with email to North Lanarkshire Council dated 19 January 2023.
3. On 6 February 2023 the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 7 March 2023, the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 12 April 2023. The Respondent required to lodge written submissions by 28 March 2023. This paperwork was served on the Respondents by Andrew McLean, Sheriff Officer, Glasgow on 8 March 2023 and the Execution of Services were received by the Tribunal administration.

Case Management Discussion

5. The Tribunal proceeded with the CMD on 12 April 2023 by way of teleconference. The Applicants and the Respondent all appeared.
6. The Tribunal had before it the Short Assured Tenancy between the parties dated 13 October 2017, an AT5 dated 12 October 2017, a Notice to Quit and a Section 33 Notice both dated 31 October 2022 together with a Sheriff Officers' Execution of Service dated 31 October 2022, letters dated 18 January 2023 from Adobe Estate Agents and from MacRoberts, Solicitors and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2002 with email to North Lanarkshire Council dated 19 January 2023. The Tribunal noted the terms of these documents.
7. Mrs Cameron moved the Tribunal to grant an order for eviction under Section 33 of the Housing (Scotland) Act 1988. She explained that the Applicants wished to sell the Property. They had bought it in 2008 as part of their retirement plan. They are now at retirement age. They had hoped to keep the Property a little but longer but with the rise in interest rates she explained that they needed to release some equity. The Property was only generating a small cash flow.
8. In response to questioning by the Tribunal Mrs Cameron explained the Applicants owned 4 properties. Two of the other properties had a longer term fixed rate mortgages and accordingly they planned to supplement their state pensions from those two properties. However, it makes no financial sense for

them to keep the other two properties which included the Property. She clarified that Mrs Henderson had been a good tenant throughout the tenancy.

9. Mrs Henderson's position was that she did not wish to be obstructive to the Applicants' wishes to sell. She understood that when you had a tenancy in the private sector there was a risk that the owners would want to sell. She explained that she had been saving for a deposit but when she had to stop work due to personal reasons, she had to use up her savings. She hopes to be allocated a Council house in time. She is now working again in the Housing Department of the local council who are aware of her housing position and the current action. She has had a formal application for rehousing with the Council for over 10 years. Her colleagues are aware that the CMD was proceeding. She will report the result of the CMD back to them. She explained that she has a 19 year old daughter and a 22 year old son who both live with her.

Findings in Fact

10. The Applicants let the Property to the Respondent under a Short Assured Tenancy dated 13 October 2017. The Respondent has been a good tenant throughout the period of the tenancy.
11. On 31 October 2022 the Applicants served a Notice to Quit and a Notice in terms of Section 33 of the Housing (Scotland) Act 1988 on the Respondent indicating the Applicants intended to take possession of the Property on 2 January 2023. Both notices were served on the Respondent by Sheriff Officers on 31 October 2022.
12. The Applicants are both of retirement age. They wish to sell the Property to supplement their state pensions. It is no longer financially viable for them to keep the Property due to increasing interest rates. They make a small cash flow from the Property.
13. The Respondent continues to live in the Property with her adult son and daughter. She is in employment with the Housing Department at the local council. She is fully engaged with them in relation to her housing position.
14. The Applicants served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on North Lanarkshire Council on 19 January 2023.

Reasons for Decision

15. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered oral submissions made by both Mrs Cameron and Mrs Henderson. The Tribunal were grateful to parties for their thoughtful and honest submissions. The Tribunal concluded that the Applicants were entitled to repossession of the

Property under Section 33 of the Housing (Scotland) Act 1988. There was a properly constituted Short Assured Tenancy with the Respondent. The Tribunal was satisfied that the statutory provisions of Section 33 of the Housing (Scotland) Act 1988 had been met namely that the Short Assured Tenancy had reached its end (termination date); the Notice to Quit brought the contractual Short Assured Tenancy to an end; and that the Applicant had given the Respondent notice in terms of Section 33(1)(d) of the Housing (Scotland) Act 1988 stating that possession of the property was required on 2 January 2023. This position was accepted by the Respondent who did not want to be obstructive to the Applicants' wish to sell the Property.

16. The terms of Section 33 of the Housing (Scotland) Act 1988 would normally entitle the Applicants to a right of mandatory repossession of the Property. In terms of Schedule 1, paragraph 3 (4) of the Coronavirus (Scotland) Act 2020 the Applicant also has to satisfy the Tribunal that it is reasonable to evict. In determining whether it is reasonable to grant the order the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal was satisfied that the Applicants' need to sell the Property was due to increasing interest rates and that they had a small cash flow which meant that it was not financially viable for them to keep it. It was clear to the Tribunal that there was a good relationship between parties and that the Respondent did not want to get in the way of the Applicants' wish to sell the Property. The Tribunal was also satisfied that the Respondent was taking all reasonable steps to secure alternative accommodation with the council. The balance of reasonableness in this case accordingly weighted towards the Applicants. The Tribunal find it would be reasonable to grant the order.

17. In the circumstances the Tribunal considered that in terms of Section 33 of the Housing (Scotland) Act 1988 it was reasonable to grant an eviction order.

Decision

18. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

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.

S. Evans

12 April 2023

Legal Chair

Date