



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/22/2158

Re: Property at 16 Mennock Court, Hamilton, ML3 9DJ (“the Property”)

Parties:

Mr Alexander Lawrie, 154 Wellhall Road, Hamilton, ML3 9XW (“the Applicant”)

Mr William O'Donnell, 16 Mennock Court, Hamilton, ML3 9DJ (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

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 16 Mennock Court, Hamilton, ML3 9DJ be granted. The order will be issued to the Applicant 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 his goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 4 July 2022, the Applicant’s agent 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 16 Mennock Court, Hamilton, ML3 9DJ (“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 and Lisa O'Donnell signed and dated 3 July 2014, an AT5 signed and dated 3 July 2014, a Notice to Quit and a Section 33 Notice both dated 29 April 2022 together with a Sheriff Officers' Execution of Service dated 29 April 2022 and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2002 with email to South Lanarkshire Council dated 4 July 2022.
3. On 1 September 2022 the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 4 October 2022, 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 11 November 2022. The Respondent required to lodge written submissions by 25 October 2022. This paperwork was served on the Respondents by Andrew McLean, Sheriff Officer, Glasgow on 5 October 2022 and the Execution of Services were received by the Tribunal administration.
5. The Respondent did not make any written response to the Application.

Case Management Discussion

6. The Tribunal proceeded with the CMD on 11 November 2022 by way of teleconference. The Applicant was represented by Ms Young from ELT Lettings Ltd. There was no appearance by or on behalf of the Respondent despite the teleconference starting 5 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence.
7. The Tribunal had before it a Short Assured Tenancy Agreement between the Applicant and the Respondent with Lisa O'Donnell signed and dated 3 July 2014, an AT5 signed and dated 3 July 2014, a Notice to Quit and a Notice under Section 33 of the Housing (Scotland) Act 1988 both dated 29 April 2022, Sheriff Officers' Execution of Service dated 29 April 2022 and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2002 with email to South Lanarkshire Council dated 4 July 2022. The Tribunal noted the terms of these documents.
8. Ms Young moved the Tribunal to grant an order for eviction under Section 33 of the Housing (Scotland) Act 1988. She explained the tenancy had originally been a joint tenancy with Lisa O'Donnell but she had terminated the tenancy and left the Property on 13 July 2021. Since then the Respondent has been the sole tenant. There have been some minor issues with him including obtaining access to get safety certificates and with rent arrears which were

£1700. She had tried to get the Respondent to engage with them to deal with the arrears. She went on to explain that her client did not keep in good health and was considering downsizing and possibly moving into the Property or possibly selling the Property depending on his circumstances when he took possession of the Property.

9. In response to questioning by the Tribunal Ms Young advised she believed the Respondent was in his 40s, lived alone and did not have any health issues. She also advised that she did not believe there were any benefits issues as after Mrs O'Donnell left the Property they worked with CAB and Money Matters to sort out the Respondent's rent.

Findings in Fact

10. The Applicant let the Property to the Respondent and Mrs O'Donnell under a Short Assured Tenancy dated 3 July 2014. The AT5 was signed and dated 3 July 2014.
11. Mrs O'Donnell terminated her interest in the tenancy on 13 July 2021. The Respondent has been the sole tenant of the Property since on or about 13 July 2021.
12. On 29 April 2022 the Applicant served a Notice to Quit and a Notice in terms of Section 33 of the Housing (Scotland) Act 1988 on the Respondent indicating the Applicant intended to take possession of the Property on 3 July 2022. Both notices were served on the Respondent by Sheriff Officers on 29 April 2022.
13. The Applicant does not keep good health. He wishes to downsize and possibly move into or sell the Property depending on his circumstances when he gains possession of the Property.
14. There have been some minor issues with the Respondent including difficulties with access and rent arrears.
15. The Respondent continues to live in the Property.
16. A Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 was served on South Lanarkshire Council on 4 July 2022.

Reasons for Decision

17. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the written and

oral submissions made on behalf of the Applicant by Ms Young. The Tribunal concluded that the Applicant was entitled to seek 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 ish (termination date);the Notice to Quit brought the contractual Short Assured Tenancy to an end on 3 July 2022; 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 3 July 2022.

18. The terms of Section 33 of the Housing (Scotland) Act 1988 would normally entitle the Applicant 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 Applicant did not keep in the best of health and wanted to downsize and either live there or sell the Property. The Respondent had had over six months to find somewhere else to live. He lived in the Property alone and was causing some issues with access and rent arrears. The balance of reasonableness in this case accordingly heavily weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.

19. 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

20. 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.

Shirley Evans

11 November 2022

Legal Chair

Date