



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 (“the 1988 Act”) and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/23/2776

Re: Property at 365 Croftfoot Road, Glasgow, G44 5LN (“the Property”)

Parties:

Mrs Joyce Graham, 26 Briarsleigh, Stafford, Staffordshire, ST17 4QP (“the Applicant”)

Ms Nikola Bryce, 365 Croftfoot Road, Glasgow, G44 5LN (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for the order for possession should be granted.

Background

1. By application received on 15 August 2023, the Applicant sought an order under Section 33 of the Housing (Scotland) Act 1988 (“the Act”) for possession of the Property on termination of a Short Assured Tenancy. The application was made in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). Supporting documentation was submitted with the application, including a copy of the Tenancy Agreement, AT5, Notice to Quit, Section 33 Notice, Section 11 Notice to the local authority and proof of service of notices.

2. On 29 August 2023, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance in respect of the application in terms of Rule 9 of the Regulations.
3. A Case Management Discussion (“CMD”) was fixed for 14 November 2023 at 2pm. The application and details of the CMD fixed were served on the Respondent by Sheriff Officer on 10 October 2023. In terms of said notification, the Respondent was given an opportunity to lodge written representations by 30 October 2023. No representations were lodged prior to the CMD.

Case Management Discussion

4. The CMD took place on 14 November 2023 at 2pm by telephone conference call. The CMD was attended on behalf of the Applicant by Mr Jeffrey Livingstone of Landlord Specialist Services Scotland and on behalf of the respondent by Ms Holly Sloey, Solicitor, of Govan Law Centre. Ms Sloey advised that she had only very recently been instructed by the Respondent and had emailed the Tribunal Administration on 9 November 2023 to advise that she would be attending. The email could not be located by the Clerk but, in any event, Mr Livingstone had no objection to Ms Sloey representing the Respondent, so the CMD proceeded.
5. Following introductions and introductory comments by the Legal Member, Ms Sloey was asked to confirm the Respondent’s position in relation to the application. She indicated that the Respondent was happy to consent to the eviction order being granted and that Ms Sloey had just been instructed to attend to ensure that the eviction order granted would be subject to the ‘eviction ban’ in terms of the Cost of Living (Tenant Protection) (Scotland) Act 2022 (“COLA”).
6. The parties’ representatives were advised that, even where an order is unopposed, the Tribunal still requires to be satisfied not only that the ground for eviction is met, namely termination of a Short Assured Tenancy at its ish in terms of Section 33 of the Act, but also that it is reasonable in the circumstances for the Tribunal to grant the eviction order sought.
7. Mr Livingstone confirmed that the Applicant is now living in England and wishes to sell the Property. They were instructed by the Respondent to recover the Property and thereafter, it will be sold. However, the tenancy, being a Short Assured Tenancy, is being received on the basis that the tenancy has been brought to an end by the serving of the relevant notices by Sheriff Officer and the Respondent having been given at least 2 months’ notice of that. Mr Livingstone stressed that there have been no issues whatsoever with this tenancy but also that there has been no contact from the Respondent at all. If she had been in contact with them, they would have offered her any assistance they could. The Respondent appears to remain in occupation. He is aware that any eviction order granted today will be subject to the COLA moratorium on evictions being executed.

8. Ms Sloey advised, on behalf of the Respondent that she had applied to several Housing Associations for alternative housing but that she has not secured alternative accommodation as yet. The Respondent is hopeful that the 6-month delay before eviction can take place will allow her to secure accommodation as she wishes to avoid going down the homelessness route with the local authority. The Respondent is not especially vulnerable, although has had cancer. She is thought to live alone and Ms Sloey did not believe that she was in work. She apologised that she did not have any more detailed information regarding the Respondent's circumstances and explained that this was due to her late instruction. Mr Livingstone indicated that, from his file, it appears that the Respondent is in her forties and was a self-employed photographer. There were no indications of her struggling financially as the rent was always paid.
9. The Tribunal adjourned the proceedings briefly in order to deliberate in private and, on re-convening, the Legal Member advised that the Tribunal had decided to grant the eviction order sought and that the detailed written Decision would be issued to parties shortly. The timescales for the order being issued and thereafter being enforceable were also explained. The parties' representatives were thanked for their attendance and the CMD was brought to a close.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant by virtue of a Short Assured Tenancy which commenced on 17 January 2015.
3. The Applicant ended the contractual tenancy by serving a Notice to Quit and Section 33 Notice on 11 May 2023, specifying the end of the notice period (2 months) as 17 July 2023, an ish date in terms of the lease. Both notices were in the correct form, provided sufficient notice and were served validly on the Respondent by way of Sheriff Officer.
4. The Respondent has remained in possession of the Property following expiry of the notice period.
5. This application was lodged with the Tribunal on 15 August 2023, following expiry of the notice period.
6. The Respondent was legally represented at the CMD and does not contest the application.

Reasons for Decision

1. The Tribunal considered the documentation before it and the oral submissions made by both parties' representatives at the CMD. The Tribunal was satisfied that the Respondent understood the position and was not wishing to contest the eviction application.
2. The Tribunal was satisfied that pre-action requirements including the service of the Notice to Quit and Section 33 Notice in terms of the 1988 Act had been properly and timeously carried out by the Applicant prior to the lodging of the Tribunal application. Section 33(1) of the Act states that an order for possession shall be granted by the Tribunal if satisfied that the short assured tenancy has reached its finish; that tacit relocation is not operating; that the landlord has given to the tenant notice stating that he requires possession of the house; and that it is reasonable to make an order for possession. The Tribunal was satisfied that all requirements of Section 33(1) had been met.
3. As to reasonableness, the Tribunal took into account the circumstances of both parties presented to them in the oral submissions made at the CMD. The Tribunal considered that the Applicant had a legitimate reason for requiring possession of the Property back and that the Respondent understood and accepted the position. The Tribunal noted that the Respondent has been aware of the position for several months and has already made enquiries regarding seeking alternative accommodation. It appears that the Respondent does not have any dependants living with her and that there have been no issues with this tenancy. The Tribunal was also aware that, if granting an order today, given the terms of the Cost of Living (Tenant Protection) (Scotland) Act 2022, there was still a fairly lengthy period before the order could be enforced and that this would provide the Respondent a further opportunity to secure alternative accommodation. In all of the circumstances, the Tribunal considered that the likely impact on the Respondent of granting the eviction order was outweighed by the impact on the Applicant and owner of the Property were the order not to be granted. The Tribunal was therefore satisfied that it was reasonable to grant the order sought. There was no requirement to continue the application to an Evidential Hearing, given that there was nothing in dispute and the tribunal therefore considered it appropriate to grant the order at the CMD.

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.

N. Weir

Legal Member/Chair

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14 November 2023
Date