



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/23/2314

Re: Property at 12 Milnefield Avenue, Elgin, Moray, IV30 6EL (“the Property”)

Parties:

Mrs Sara Anderson, 20 King Street, Elgin, Moray, IV30 1EU (“the Applicant”)

Mr John Stillie, 12 Milnefield Avenue, Elgin, Moray, IV30 6EL (“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 12 Milnefield Avenue, Elgin, Moray, IV30 6EL under Section 33 of the Housing (Scotland) Act 1988 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 her name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 11 July 2023, the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for recovery of possession 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 dated 30 November 2017 between Mary Main and the Respondent, an AT5 dated 30 November 2017, a rent statement to 30 June 2023, a Notice to Quit and Section 33 Notice dated 11 April 2023 together with a proof of delivery signed by the Respondent on 13 April 2023 and a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 to Moray Council.
3. On 3 August 2023 the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. A Case Management Discussion (“CMD”) under Rule 17 of the Regulations was assigned to proceed on 19 October 2023. That CMD was discharged on the Applicant’s motion and a new CMD was assigned to proceed on 18 December 2023.
5. The Tribunal issued a Notice of Direction for the Applicant to lodge an up to date rent statement together with correspondence between herself or her agents and the Respondent regarding the arrears. The Applicant responded accordingly.

Case Management Discussion

6. The Tribunal proceeded with the CMD on 18 December 2023 by way of teleconference. The Applicant Mrs Anderson represented herself. She was joined by her husband Keith Anderson. The Representative Mr Stillie represented himself. The case was heard together with an application for rent arrears under case reference FTS/HPC/EV/23/2315.
7. The Tribunal had before it the Short Assured tenancy dated 30 November 2017 between Mary Main and the Respondent, an AT5 dated 30 November 2017, a rent statement to 30 November 2023, a Notice to Quit and Section 33 Notice dated 11 April 2023 together with a proof of delivery signed by the Respondent on 13 April 2023, various text messages from Belvoir Lettings to the Respondent and to the Applicant, letters dated 18 May 2023 and 28 June 2023, emails dated 15 February 2023 and 28 June 2023 and a Notice dated 11 July 2023 under Section 11 of the Homelessness etc (Scotland) Act 2003 addressed to Moray Council. The Tribunal noted the terms of these documents.
8. The Applicant explained she was an accidental Landlord having inherited the Property from her mother who had rented it out to fund care home costs. She was a compassionate Landlord and had done the Property up nicely and always attended to repairs. However, she was unable to fund the outgoings such as insurance which had increased due to the rent arrears. Rent arrears were now £11 650. The Tribunal noted the terms of the rent statement dated 30 November 2023 and that the Respondent had paid £500 on 28 February 2023 and £300 on 17 July 2023. The Tribunal also noted that in terms of Clause 6 of the Short Assured Tenancy Agreement the monthly rent was

£675. She asked the Tribunal to grant an Order for eviction. She submitted the Respondent had been given lots of opportunity to pay the rent and clear the arrears but he had not done so.

9. In response Mr Stillie explained that he had been a lorry driver but he had had to give that up due to issues with his back. He found another job as an HGV driver in June and was told to expect a certain amount of overtime. He works 4 days on and 4 days off. Unfortunately, the level of overtime promised has not transpired. His net pay is about £300 per week. He has not taken any money advice to see whether he was entitled to other benefits. He had not approached the Council about rehousing and had not looked for other accommodation. The Tribunal noted the Respondent had been sign posted to advice agencies in the letters dated 18 May and 28 June 2023. He accepted he was in arrears of £11 650. He had other debts. He lived alone. He apologised to the Applicant whom he considered had been a good Landlord.
10. The Tribunal asked Mrs Anderson to respond. She explained she had a 24 year old autistic son and a 22 year old daughter at university both of whom she supported. Her husband was retired. She found the situation very stressful. She had a lot of expense to pay for the Property to keep it to a decent standard but submitted Mr Stillie had not given her anything back to show he was serious about wanting to continue to live there. She had not put up the rent which had remained the same since 2017. She could not continue without the rent. She had tried to be sympathetic and helpful. She still needed the order for eviction in the circumstances.

Findings in Fact

11. The Applicant's mother Mary Main and the Respondent agreed by way of Clause 6 of a Short Assured Tenancy Agreement commencing on 30 November 2017 in relation to the Property that the Respondent would pay a monthly rent of £675.
12. The Applicant inherited the Property on her mother's death.
13. The terms of the Short Assured Tenancy Agreement have not been varied. The Respondent has an ongoing obligation to pay rent of £675 per month.
14. The Respondent has fallen into arrears of rent of £11650. He has made two payments to account in 2023, one payment of £500 on 28 February 2023 and one payment of £300 on 17 July 2023.
15. The Applicant's letting agents Belvoir regularly texted the Respondent regarding the arrears. They also sent the Respondent letters of 18 May 2023 and 28 June 2023 about the arrears in an attempt to get him to enter into a repayment arrangement. The letters sign posted the Respondent to advice agencies and encouraged him to find out whether he was entitled to any benefits.

16. The Applicant served a Notice to Quit and a Section 33 Notice both dated 9 11 April 2023 on the Respondent by Recorded Delivery post. The Notice to Quit and the Section 33 Notice expired on 30 June 2023.
17. The Respondent remains in the Property. He lives alone. He is in employment. He has not explored whether he would be entitled to any benefits. He has not explored his housing options.
18. The Respondent continues to accrue arrears. He has not entered into any repayment arrangements with the Applicant.
19. The Applicant served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on Moray Council on 11 July 2023.

Reasons for Decision

20. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the oral submissions made by the Applicant and by the Respondent at the CMD. 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 term (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 by 30 June 2023.
21. 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 considered that the amount of the arrears which were admitted were substantial at over £11000. Although the Respondent had the best of intentions to pay the arrears it, he was not paying ongoing rent and accordingly it appeared to the Tribunal he was not in a position to pay the arrears given his current employment position. The Tribunal also gave weight to the fact that the Respondent has not sought money advice or explored his housing options. Although he was apologetic to the Applicant the Tribunal gave weight to the fact he had not entered into any repayment arrangement with the Applicant. On the other hand, the Applicant had dependent children to support as well as outgoings to comply with her obligations as a Landlord and homeowner. On balance the Tribunal did not feel that it was reasonable to expect the

Applicant to continue to bear the ongoing loss of rent in light of the fact that the arrears were substantial and that it appeared the Respondent was not in a position to pay ongoing rent let alone try to reduce the arrears. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.

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

Decision

23. 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

18 December 2023

Legal Chair

Date