



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/23/2452

Re: Property at 4 Barhill, Dalbeattie, DG5 4HG (“the Property”)

Parties:

Mrs Victoria Boardman, 45 Brockington Drive, Hereford, HR1 1TA (“the Applicant”)

Mr Alistair J MacRury, 4 Barhill Crescent, Dalbeattie, DG5 4HG (“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 24 July 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 and Section 11 Notice to the local authority.

2. Following initial procedure and further supporting documentation being submitted by the Applicant, on 22 September 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 19 December 2023 at 10am. The application and details of the CMD fixed were served on the Respondent by Sheriff Officer on 9 November 2023. In terms of said notification, the Respondent was given an opportunity to lodge written representations by 27 November 2023. No representations were lodged prior to the CMD. However, on 18 December 2023, the Citizens Advice Service (“CAS”) emailed the Tribunal to advise that they would represent the Respondent at the CMD as he was vulnerable and they attached a signed mandate from the Respondent, confirming that they were authorised to act.

Case Management Discussion

4. The CMD took place on 19 December 2023 at 10am by telephone conference call. The CMD was attended on behalf of the Applicant by Ms Karen Millar, Property Agent of GM Thomson & Co. The Respondent was present and was represented by Ms Doreen Beattie of CAS.
5. Following introductions and initial comments by the Legal Member, Ms Beattie was asked to confirm the Respondent’s position in respect of the application. She stated that the Respondent had no grounds for opposing an eviction on this ground and had no objection to the eviction order being granted.
6. The Legal Member explained that the Tribunal requires to be satisfied not only that the ground for eviction is met, namely valid termination of the Short Assured Tenancy 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. Ms Millar was asked to address the application with that in mind and was also asked to address the technical issue which had been identified previously in respect of this application, namely that proof of the date of service of the Notice to Quit and Section 33 Notice on the Respondent was required.
7. Ms Millar referred to the additional documentation they had submitted to the Tribunal regarding the date of service of the notices and the explanation offered previously. She explained that there were two sets of notices served here, the first ones were signed for by the Respondent but the second set were not. It is the second set that are being relied on here. Ms Millar referred to the problem they had encountered here, in that there is a common glitch with the Royal Mail track and trace system, whereby, if the letter is not signed for, they are unable to get anything from the Royal Mail system which establishes the date of delivery. She confirmed, however, that they had submitted a screenshot from the Royal Mail system which shows the same reference number as on the posting receipt they had also produced. The Legal Member referred to the fact that the posting receipt had no date stamp on it. Ms Millar had no explanation for that. She confirmed that all Recorded Delivery mail is dealt with by their

administrative staff and follows a set process. However, Ms Millar confirmed that their covering letter of 4 May 2023 sent to the Respondent with the notices shows that this was the date on which they generated the mail and it would have gone into the Royal Mail system on that date and been delivered to the Respondent within one or two days. Ms Beattie was asked to comment on this and indicated that she had no issue with this but suggested that the Respondent be asked directly as she is unaware of the precise circumstances around the service of the notices. Mr MacRury confirmed that he had been served with notice following an inspection of the Property by the Applicant's agents in March 2023 but that, on reading the first line which mentioned notice to quit, he read on no further. He explained that he has had some issues with his mental health and felt that he was being served with notice for spurious reasons. He stopped dealing with the letters he was receiving from the Applicant's agents after that and sought advice from CAS (at which point someone else from CAS was dealing with the matter on his behalf). Mr MacRury stated that he was initially told the reason was due to rent arrears and the condition of the Property, both of which he denied, but was then told that it was because the landlord wished to sell the Property.

8. Ms Millar responded to Mr MacRury's comments and stated that they had not told the Respondent that the Applicant wished to sell. She explained that the reason the Applicant wishes the Property back is so that it can be refurbished and let out again. The Applicant's position is that the Respondent has allowed the condition of the Property, externally and internally, to deteriorate. Communication has also broken down and the Respondent is persistently late paying his rent. This is sometimes by a day but sometimes up to a week and this causes difficulty to the Applicant who is not rich and relies on the rental income from the Property. They visited the Property on behalf of the Applicant on 17 March 2023 and it was on the basis of the photographs they took during that inspection, that the Applicant decided that she wished to recover the Property. Ms Millar stated that there was a leak in the kitchen ceiling reported by the Respondent but, when their contractor attended at the Property in June 2023, the Respondent, who appeared to be in, did not answer the door to let him in. Ms Millar said that she would have liked an opportunity to explain directly to the Respondent in advance that he would be receiving the notice paperwork and to explain the Applicant's position to him. However, that had not been possible as the Respondent was not communicating with them.
9. Ms Beattie was asked if this changed the Respondent's position in relation to the application. Ms Beattie said that, although she is aware that this is a no-fault eviction application, she would like the opportunity to have a brief adjournment in order to take instructions from the Respondent, as it had been her understanding (from the Respondent) that the reason behind the eviction application was that the Property was to be sold. The Tribunal accordingly adjourned for 15 minutes to allow this.
10. On re-convening, Ms Beattie stated that the Mr MacRury was still not wishing to oppose the no-fault eviction. However, he did wish to comment on a few of the issues raised. He has been residing in the Property for 17 years with no issue. As to the rent being a day or two late, Ms Beattie advised that this is due

to the way the Respondent's Universal Credit is paid. He considers that the last visit carried out by the Applicant's agent had essentially been 'nit-picking', raising matters such as a cobweb on the ceiling, or a dirty windowsill. He feels he has been treated poorly since the Applicant's agents took over management of the Property.

11. Ms Millar confirmed that GM Thomson & Co took over the management of the Property again in 2020 as the Applicant was experiencing difficulty and annoyance by the rent payments from the Respondent being persistently late. Ms Millar confirmed that there were no arrears of rent currently and that there has not been an issue with rent arrears generally, other than the account technically being in arrears for a day or several days per month. Ms Millar reiterated that the Applicant's decision to recover her Property was primarily based on her concerns regarding the condition of the Property and her wish to refurbish it. The Property was let as a Short Assured Tenancy and this is therefore the ground for eviction being relied upon.
12. The Legal Member reiterated that, apart from the ground of eviction being established, the Tribunal needs to be satisfied on the question of the reasonableness of an eviction order being granted. It was explained that the Tribunal could be asked to make an order today, as requested by Ms Millar on behalf of the Applicant, but that the Tribunal could also continue the matter on to an Evidential Hearing on the issue of reasonableness. Ms Beattie confirmed that the Respondent, whilst wishing to put forward his comments today on some of the issues raised, has already approached the homeless department of the local authority and does intend to move out of the Property but hoped that this would be subject to the Cost of Living Act protection, meaning that he will have until 31 March 2024 to move out. The Legal Member confirmed that this application is caught by the Cost of Living Act protections, that the Tribunal has no discretion in this matter and that the timescale for enforcement of any order granted today would indeed be delayed until 31 March 2024.
13. Mr MacRury was asked if he wished to put forward any further details on his own behalf in respect of his circumstances and his vulnerabilities that had been mentioned earlier. Mr MacRury explained that he has ongoing mental health issues and that this process has not helped. He considers that the matter could have been handled better by the Applicant's agents. He lives with his daughter, aged 20, and his son, aged 15, who has Aspergers and needs to attend his local school as changes are not good for him. Mr MacRury therefore needs to be re-housed nearby. The Property is a three-bedroom property and the family will require a three-bedroom property to go to. Mr MacRury confirmed that the local authority are aware of his circumstances and are sympathetic to his situation. They are aware of today's Tribunal proceedings and have confirmed that they will treat his application for housing as a priority if an eviction order is granted.
14. Ms Millar was asked to sum-up. She reiterated that the Applicant wants her Property back to renovate it and that they have to act on the Applicant's instructions and in her interests. Ms Millar added that she was aware of the

family circumstances of the Respondent and hopes that he will secure the right house for the family to move into.

15. Ms Beattie summed up by saying that the Respondent has had a hard time recently with his mental health and has felt a bit pressurised by the way the matter has been dealt with. However, he is aware that it is a no-fault eviction situation and will now progress with his housing application as soon as possible in order that he can move on. Ms Beattie confirmed that he has had quite a lot of support from CAS and that this will continue with them providing him with housing and any other support required.
16. The Tribunal adjourned briefly to discuss the application is private. On re-convening, it was confirmed that the order would be granted today. Parties were thanked for their attendance. Mr MacRury had not re-joined the call following the adjournment but Ms Beattie confirmed she would advise him of the outcome

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 20 April 2007.
3. The Applicant ended the contractual tenancy by serving a Notice to Quit and Section 33 Notice on or around 6 May 2023, specifying the end of the notice period as 21 July 2023, an ish date in terms of the lease. Both notices were in the correct form, provided sufficient notice and were served on the Respondent by way of recorded delivery post.
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 24 July 2023, following expiry of the notice period.
6. The Respondent participated in the CMD, was represented, and does not contest the application.

Reasons for Decision

1. The Tribunal was satisfied that the Respondent understood the position, was represented at the CMD 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 and that the ground for eviction was met. 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. There had been a potential issue regarding the date of service of the Notice to Quit and Section 33 Notice, given that the Applicant had not produced, prior to the CMD, satisfactory documentary proof of the date the posting or the date of delivery to the Respondent. However, having considered the documentation already produced, the further information from the Applicant's agent at the CMD and having also noted the Respondent's position on the matter, the Tribunal was satisfied that the notices had been sent out by the Applicant's agent on 4 May 2023 via the Royal Mail recorded/track and trace service and that delivery is deemed to have taken place 48 hours later, thereby on or around 6 May 2023.

3. As to reasonableness, the Tribunal considered the oral submissions of the Respondent, his representative and the Applicant's agent at the CMD and took into account the circumstances of both parties in reaching their decision. The Tribunal was persuaded that the Applicant had reasons for wanting her Property back and that, although the Respondent did not consider these good reasons and felt that the matter could have been handled better by the Applicant's agents, he understood and accepted that the Applicant was entitled to seek to recover the Property by terminating the Short Assured Tenancy by giving at least 2 months' notice and that this was essentially a 'no fault' eviction. He did not wish to contest the ground, nor the issue of reasonableness and his representative stated that he wished to move on. The Tribunal noted that the Respondent had been aware of the eviction process for many months now, has obtained advice and support from CAS and has already been in contact with his local authority about obtaining alternative housing. The local authority are aware of the Respondent's housing needs, given that he lives with two of his children, and also the Respondent's vulnerabilities and his son's health condition. The Respondent will continue to receive support from CAS in respect of his housing situation and other matters. The Tribunal was also aware, in granting the order today, that 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 these circumstances, the Tribunal was satisfied that it was reasonable to grant the order sought.

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

19 December 2023

Date