



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/23/2997

Re: Property at 155 Woodhill Road, Bishopbriggs, Glasgow, G64 1DE (“the Property”)

Parties:

Craig Wallace, 12 Craufurd Crescent, Barrmill, North Ayrshire, KA15 1HR (“the Applicant”)

Margaret Campbell, 155 Woodhill Road, Bishopbriggs, Glasgow, G64 1DE (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Tony Cain (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. This is an application by the Applicant for an order for possession on termination of a short assured tenancy in terms of rule 66 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The tenancy in question was a Short Assured Tenancy of the Property by the Applicant to the Respondent commencing on 15 July 2011.
2. The copy application was dated 29 August 2023 and lodged with the Tribunal on that date. This makes the application subject to the *Cost of Living (Tenant Protection) (Scotland) Act 2022*, as shall be referred to further below.
3. The application relied upon a Notice to Quit and notice in terms of section 33 of the *Housing (Scotland) Act 1988*, both dated 8 May 2023, providing the

Respondent with notice (respectively) that the Applicant sought to terminate the Short Assured Tenancy and have the Respondent vacate, each by 15 July 2023. Evidence of service of the said notices by Sheriff Officer service on 12 May 2023 was included with the application.

4. Evidence of a section 11 notice dated 29 August 2023 in terms of the Homelessness Etc. (Scotland) Act 2003 served upon East Dumbartonshire Council was provided with the application.

The Hearing

5. On 13 December 2023 at 10:00, at a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting remotely by telephone conference call, we were addressed by the Applicant’s solicitor, Kirstie Donnelly, TC Young, and by the Respondent herself.
6. We sought clarification from the Applicant’s solicitor as to whether the application was insisted upon and from Respondent as to whether the application was opposed. The parties explained that discussions had taken place between the Applicant and Respondent direct. The Respondent confirmed that, though she first had wished to remain at the Property, she had now decided to leave and had obtained a new private tenancy with an entry date of 22 December 2023. She did not oppose eviction and wanted “to start afresh in a new home”.
7. The Applicant’s agent’s understanding was similar, though she wished eviction decree in case the Respondent did not leave voluntarily. There was discussion as to rent arrears, a dispute as to the extent of the arrears, and that there were settlement discussions on the arrears (to be advanced further in the event of the Respondent leaving voluntarily). We confirmed with both parties that it was understood that the arrears issues were separate and not conditional on the Respondent’s position on eviction. This was confirmed and the Respondent understood that, should she leave voluntarily, an agreement with the Applicant on rent arrears may still not be concluded. For that reason, parties sought a conjoined application on arrears (CV/23/2999) now to proceed separately and both parties sought it continued.
8. We further confirmed with the Respondent that she understood that if an eviction order was issued, it would be subject to a period of suspension of any order provided by the 2022 Act, but could eventually be enforced if she did not leave voluntarily before then. She confirmed to us during the CMD that she understood the position but still did not oppose the eviction order.
9. In regard to the details and merits of the application, the Applicant’s agent confirmed that the Property was one of two properties owned for let by the Applicant but that the other had no equity. The Applicant sought to sell the Property to raise funds, due to financial pressures from the current cost of living rises. In particular, his mortgage payments on the Property were around 2.5 times their previous level, and at one point had been around 5 times that previous level (and at that point were in excess of the monthly rent). The

Applicant was in employment but was finding it necessary to use credit cards to fund day-to-day spending, all of which was causing him mental stress. He had investigated a sale of the Property with the Respondent remaining as a sitting tenant but this had fallen through. He had no other options but to bring the Tenancy to an end and sell the Property. In addition, though the amount was disputed by the Respondent, parties were agreed that there were rent arrears. The Applicant provided a statement showing them to be £8,404.98. The Respondent sought further time (in the CV application) to reconcile her bank statements and confirm what she believed to be the true arrears figure.

10. The Respondent said that she lived with her three children at the Property. They were aged 22 (in part-time college education, locally) and twins of 16 (in full-time education in the local school). The Property was not adapted for their use nor specially suitable for their needs.
11. In consideration of the Respondent's consent to the order, the Respondent had no contrary submissions on the grounds for eviction.
12. No order for expenses was sought.

Findings in Fact

13. By written lease dated 16 July 2011, the Applicant let the Property to the Respondent by lease with a start date of 15 July 2011 for a "six month period and thereafter monthly" ("the Tenancy").
14. The Tenancy was a Short Assured Tenancy in terms of the *Housing (Scotland) Act 1988* further to the Applicant issuing the Respondent with a notice under section 32 of the 1988 Act (an "AT5") on 13 July 2011, prior to commencement of the Tenancy.
15. On 8 May 2023, the Applicant drafted a Notice to Quit in correct form addressed to the Respondent, giving the Respondent notice that the Applicant wished her to quit the Property by 15 July 2023.
16. On 8 May 2023, the Applicant drafted a Section 33 Notice under the 1988 Act addressed to the Respondent, giving the Respondent notice that the Applicant required possession of the Property by 15 July 2023.
17. 15 July 2023 is an ish date of the Tenancy.
18. On 12 May 2023, a Sheriff Officer acting for the Applicant competently served each of the notices upon the Respondent. The Respondent was thus provided with sufficient notice of the Applicant's intention that the Tenancy was to terminate on 15 July 2023.
19. On or around 29 August 2023, the notice period under the notices having expired, the Applicant raised proceedings for an order for possession with the Tribunal, under rule 66, the grounds of which being: that the Tenancy had reached its ish; that tacit relocation was not operating; that no further

contractual tenancy was in existence; that notice had been provided that the Applicant required possession of the Property all in terms of section 33 of the 1988 Act; and that it was reasonable to make the order.

20. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon East Dunbartonshire Council on or around 29 August 2023 on the Applicant's behalf.
21. On 1 November 2023, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondent, providing the Respondent with sufficient notice of the CMD of 13 December 2023.
22. The Applicant seeks to sell the Property as part of a realisation of his assets, so as to ease financial pressures.
23. The Respondent is in rent arrears.
24. The Respondent lives in the Property with her three children, two of whom are 16 and in full-time education in a local school.
25. The Respondent has made arrangements to obtain alternative accommodation, with an expected date of entry of 22 December 2023.

Reasons for Decision

26. The application was in terms of rule 66, being an order for possession upon termination of a short assured tenancy. We were satisfied on the basis of the application and supporting papers that the necessary notices had been served with sufficient notice, the Respondent was extending no defence or dispute to the notices, and thus the requirements of the 1988 Act had been complied with.
27. We require, in terms of the 1988 Act as currently amended, to consider "that it is reasonable to make an order for possession". On this, the Respondent offered no opposition and indeed consented to the order. She hoped to leave voluntarily in early course. We were satisfied that the Applicant's reasons for seeking eviction were reasonable and it was reasonable to evict. In the circumstances before us, and particularly considering the Respondent's position and the suspension that will be applied under the 2022 Act, we were thus satisfied that it was reasonable to grant the application.
28. The Rules allow at rule 17(4) for a decision to be made at a CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time but with the earliest date of eviction suspended in terms of the 2022 Act in the following fashion: not to be executed prior to 12 noon on the earlier of:
 - a. the day following the end of a period of 6 months beginning the date of our order (that is the day after 13 June 2024); or
 - b. the date of the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 (currently scheduled for 31 March 2024).

Decision

29. In all the circumstances, we make the decision to grant an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988 suspended as stated above in terms of the 2022 Act.

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.



13 December 2023

Legal Member/Chair

Date