



Decision 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/23/3109

Re: Property at 49 Cumbrae Drive, Falkirk, Stirlingshire, FK1 4AQ (“the Property”)

Parties:

Mr Peter McNulty, Mrs Michelle McNulty, 20 Morton Avenue, Paisley, Renfrewshire, PA2 7BW (“the Applicant”)

Mrs Lynda Sutherland, Mr Colin Sutherland, 49 Cumbrae Drive, Falkirk, Stirlingshire, FK1 4AQ (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and David MacIver (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 5 September 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 5 October 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 9 January 2024. The application and details of the CMD fixed were served on the Respondent by Sheriff Officer on 14 November 2023. In terms of said notification, the Respondent was given an opportunity to lodge written representations by 4 December 2023. No representations were lodged prior to the CMD.

Case Management Discussion

4. The CMD took place on 9 January 2024 at 2pm by telephone conference call. The CMD was attended by both Applicants and both Respondents. Mr McInulty spoke for the Applicant and Mrs Sutherland for the Respondent.
5. Following introductions and initial comments by the Legal Member, Mrs Sutherland was asked to confirm the Respondent’s position in respect of the application. She stated that the Respondent was not opposing the application as they understand the Applicant’s position but wished to explain their position and hopefully secure some additional time to allow them to secure alternative accommodation through the local authority. Mrs Sutherland explained that they have been advised by the local authority that they should stay put until the Tribunal process was complete. They also looked at the option of moving to a new private let but the rents currently are so high that they cannot afford to do so.
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, even where there is no opposition from the Respondent. The Legal Member also explained the effect of the Cost of Living tenancy protections currently in place, which meant that any eviction order granted would not be enforceable until 31 March 2024.
7. Mr McInulty was asked to address the application. He advised that this was the first direct contact they have had with the Respondent as Clyde Property had handled the management of the tenancy for the Applicant. He explained that they do have sympathy for the Respondent’s position as they had been good tenants, had paid their rent on time and upkept the condition of the Property. However, it is the financial aspects of the tenancy that mean the Applicant has no option now but to sell the Property. Mr McInulty stated that their mortgage interest rate has been increased 17 times between January 2022 and May 2023 which means that they are now in shortfall every month between the rent received and the money they are paying out. The shortfall is currently around £200 per month which they have been meeting from their own finances but are unable to continue doing so. This is their only rental property and due to the

financial situation and uncertainty, they have decided that their time as a landlord is up. They are looking to sell the Property as soon as they can and have already appointed an estate agent who is ready to go in as soon as they have recovered the Property. Mr McNulty confirmed that the Property would already be on the market by now if the Respondent had moved out at the end of the notice period. He reiterated that they had sympathy for the Respondent but have no choice.

8. Mrs Sutherland was asked to provide some further detail on the Respondent's circumstances. She confirmed that they live with their two daughters and grandson, following their eldest daughter's relationship breakdown with her partner. Their younger daughter who is 16 is receiving chemotherapy at the moment to treat a medical condition. The Property is a three-bedroom property and they are looking for a three-bedroom property for the family to move to. Mrs Sutherland confirmed that the local authority have all the details of the family circumstances and that she and her husband are both working. Apart from the costs of an alternative private let, Mrs Sutherland advised that they now consider that local authority housing is the best way forward for them, as they do not wish to be in this position again.
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 to parties. The parties were thanked for their attendance and the CMD was brought to a close.

Findings in Fact

1. The Applicant is the joint owner and landlord of the Property.
2. The Respondent is the joint tenant by virtue of a Short Assured Tenancy which commenced on 28 July 2017.
3. The Applicant ended the contractual tenancy by serving a Notice to Quit and Section 33 Notice on 26 April 2023, specifying the end of the notice period (2 months) as 28 June 2023, an ish date in terms of the lease. The notices were in the correct form, provided sufficient notice and were served validly on the Respondent by way of Recorded Delivery/'signed for' post on 27 April 2023.
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 5 September 2023, following expiry of the notice period.
6. The Respondent participated in the CMD and does not contest the application.

Reasons for Decision

1. 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 considered the oral submissions of both Mr McNulty and Mrs Sutherland at the CMD and took into account the circumstances of both parties in reaching their decision. The Tribunal was persuaded that the Applicant had a legitimate reason for requiring possession of the Property back and that the Respondent understood and accepted that reason and also that the Respondent had been aware of the circumstances for some time, as notice had been served in April 2023. The Tribunal noted that the Respondent is seeking alternative accommodation through her local authority and has already applied to them. The local authority are aware of the Respondent's family circumstances and housing needs and Mrs Sutherland's understanding is that their housing application will be progressed once the outcome of the Tribunal application is known. 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 period of well over two months before the order could be enforced and that this would provide the Respondent a further opportunity to secure alternative accommodation through the local authority. 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 were the order not to be granted. The Tribunal was therefore 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.

Legal Member/Chair _____

9 January 2024
Date