



Decision 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/23/3055

Re: Property at 22 Thomson Court, Uphall, EH52 6BY (“the Property”)

Parties:

Ms Lesley Fraser, 24 Allee Du Pin, 11300 La Digne D'Aval, France (“the Applicant”)

Mr Robert Short, Ms Emma Eyre, 22 Thomson Court, Uphall, EH52 6BY (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession of the property be granted it being reasonable to grant such an order.

Background

1. This application for a possession order in terms of Rule 66 of the tribunal rules of procedure was first lodged with the tribunal on 4th September 2023 along with a related application for a payment order with reference FTS/HPC/ 23/3056 and these applications were accepted by the tribunal on 18th September 2023. A case management discussion was fixed for 18th December 2023 at 10am.

Case Management Discussion

2. The Applicant did not attend the case management discussion but was represented by Mrs Mullen solicitor of TC young solicitors. The Respondents both attended the case management discussion and represented themselves.

3. The tribunal had sight of the application, a paper apart, a tenancy agreement, a Form AT5 a notice to quit, a notice in terms of section 33 of the Housing (Scotland) Act 1988, an execution of service, a rent statement and notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 and an e-mail sending this to the local authority.

4. The parties had entered into a short, assured tenancy agreement at the property with effect from 5th October 2015. The monthly rent payable in terms of the tenancy agreement is £650 per month payable on the 1st of each month. At the time of the case management discussion rent arrears had accrued in terms of the tenancy and the respondents accepted that they owed £2900 in outstanding rent arrears to the Applicant.

5. Mrs Mullen's position was that the applicant is 63 and lives in France. She is self-employed as an estate agent and lives on a very low income. She requires to wait for a property to be sold in order to receive commission. She expects to receive commission in January 2024 of around 816 euros, but this requires to last until April 2024. She has one other property that she rents out in France but the rent from this barely covers insurance payments. Given the infrequent commission payments she relies on the income from the rental property to cover her living costs. If she were to be receiving rent which was currently in arrears, she might just be able to cover her expenses. Her car is currently failing, and she can't afford to replace it but she cannot work without a car. She considers that her position cannot be sustained that she will require to sell up in France and come home to Scotland. Given the irregular nature of her income she believes she must sell or move. She has yet to decide whether she will move into this rented property if it becomes vacant or if she will sell it.

6. The Tribunal legal member explained to the Respondents what the tribunal had to consider in relation to the application.

7. Ms Eyre spoke on behalf of the Respondents in relation to the application. She said that she had nothing to say as it was apparent that the Applicant needed her house back. She said that they had approached the local council and been told that they wouldn't be able to obtain help unless they were actually evicted from the property. Ms Eyre accepted that the Respondents had received paperwork served on them by sheriff officers in relation to the application.

8. Ms Eyre indicated that while they were hopeful of being rehoused it wasn't definite, but they expected they would get into something eventually. They were a family of 5 with 3 young children. They required to seek a four-bedroom property although she had indicated she would accept a three-bedroom property. She said she had been working with their MP to assist in getting rehoused and getting more points in terms of the waiting list. She said that the local MP had told them what they had to do. She said she had never been through a process like this before. The Respondents accepted that they had fallen behind with the rent due to the cost of living and several accrued debts. Ms Eyre confirmed that they did not oppose the eviction order and were happy for it to be granted.

9. The tribunal legal member clarified for the Respondents that the application was subject to the Cost of Living (Tenant Protection) (Scotland) Act 2022 and as such if

an order was granted the earliest that action could be taken in relation to eviction would be after the 31st of March 2024.

10. The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

11. The parties entered into a short, assured tenancy at the property with effect from 5th October 2015.

12. The initial tenancy ran until the 5th of April 2016 and the agreement indicated that if neither party brought it to an end it would continue on a monthly basis thereafter.

13. On 3rd May 2023 the Applicant served on the Respondents a notice to quit in proper form giving them notice that they were required to move from the property on or before 5th July 2023.

14. On 3rd May 2023 the Applicant served on the Respondents notice in terms of section 33(1)(d) of the Housing (Scotland) Act 1988 indicating that the Applicant required possession of the property as of the 5th of July 2023.

15. The short assured tenancy between the Applicant and the Respondents reached its end as at the 5th of July 2023.

16. Tacit relocation is not operating in relation to this tenancy.

17. No other contractual tenancy is in operation between the parties.

18. Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was sent to West Lothian council in relation to this application on the 31st August 2023.

19. Rent arrears have accrued in terms of the tenancy agreement and the Respondents accepted that they owed £2900 to the Applicant in relation to rent arrears.

20. The Applicant is a self-employed estate agent living in France who relies on the rental income from this property to supplement her infrequent commission payments.

21. The Applicant cannot maintain her living expenses in the current situation and requires to take possession of the property either to live in it or to sell it.

22. The Respondents are a family of five with 3 children and have approached the local authority to request that they be rehoused.

23. The Respondents do not oppose a possession order and have been advised that they will receive rehousing assistance when a possession order is granted.

Reasons for Decision

24. The tribunal was satisfied that the appropriate procedural requirements had been put in place to bring this tenancy to an end. The Respondents did not dispute that proper procedures had been carried out and appeared not to oppose a possession order being granted. They have lived at the property for some time and have three young children. They did not seek to suggest that their interests required them to stay in the property and accepted that the Applicant required the property back. They had approached the local council and were awaiting assistance once a possession order was granted.

25. The Applicant appears to be in a difficult financial situation with very little money on which to live. She does have another rental property in France but the rent from that barely covers any expenses and she relies on the income from this tenancy in order to live and cover her costs. Rent arrears have accrued in the sum of £2900 and she cannot continue to sustain her own living costs in this situation. Having considered all of these circumstances the tribunal considered it was reasonable to grant the order, noting that this application was affected by the Cost of Living ((Tenant Protection) Scotland Act 2022 and that enforcement action to evict the Respondents could not take place until after the end of March 2024.

Decision

The Tribunal determined that an order for possession of the property be granted it being reasonable to grant such an order.

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

18.12.23
Date