



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under) under Section 33 of the Housing (Scotland) Act 1988 (“the Act”)

Chamber Ref: FTS/HPC/EV/23/3376

Re: Property at 76 Commercial Road, Ladybank, Cupar, KY15 7JS (“the Property”)

Parties:

The Executors of Euphemia Nairn, c/o Cronk Coar, Ballamodha Straight, Ballasalla, Isle of Man, IM9 3AY (“the Applicant”)

Shona Mulligan, 76 Commercial Road, Ladybank, Cupar, KY15 7JS (“the Respondent”)

Tribunal Members:

Jim Bauld (Legal Member) and Sandra Brydon (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 dated 22 September 2023, the applicant sought an order under section 33 of the Housing (Scotland) Act 1988 (“the Act”) and in terms of rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
2. On 13 October 2023 the application was accepted by the tribunal and referred for determination by the tribunal.

3. A Case Management Discussion was set to take place on 12 January 2024 and appropriate intimation of that hearing was given to both the landlord and the tenant

The Case Management Discussion

4. The Case Management Discussion (CMD) took place on 12 January 2024. The applicants were not personally present but were represented by Ms Alexandra Wooley, trainee solicitor, Bannatyne Kirkwood France and Co, Glasgow. The Respondent attended and was represented by her sister, Ms Freda Cooper.
5. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters

Discussions at CMD

6. The tribunal asked various questions of the parties with regard to the application
7. On behalf of the applicants, it was indicated that confirmation to the late landlord's estate had been obtained in September 2022, and the executors wished to sell the property to enable the administration of the estate to be finalised. Miss Woolley indicated that if the eviction order was granted, it would not be enforced if the tenant was cooperating with the relevant public authorities in seeking to obtain alternative accommodation
8. On behalf of the respondent, it was indicated that she has been in contact with the local council housing department seeking further assistance. She has been advised by them that they require her to wait until the eviction order is granted before they will provide her with full and proper assistance.

9. It was noted that the respondent is 62 years old and occupies the property with her son who is aged 43. The respondent has a number of medical issues including arthritis, asthma, diabetes and depression. Her son also suffers from some mental health issues.

10. The current rent of £550 is being paid in full by housing benefit and there are no current arrears. The respondent acknowledges that the landlord has died and that the executors required to sell the property. She is content to remove from the property once she has alternative accommodation, and she believes that accommodation will be provided by the local authority once the tribunal has made its decision.

11. It was the applicants' position that it was reasonable for the eviction order to be granted.

Findings in Fact

12. Euphemia Nairn and the respondent as respectively the landlord and the tenant entered into a tenancy of the property by an agreement dated 1 November 2016.

13. The tenancy was a short assured tenancy in terms of the Act.

14. The rent payable was £550 per month.

15. Euphemia Nairn died on 29 November 2021.

16. The applicants are the executors of Euphemia Nairn and obtained confirmation to her estate from Dundee Sheriff court on 20 September 2022.

17. The applicants require to sell the property to conclude the administration of the late Euphemia Nairn's estate and have instructed Rollos, solicitors and estate agents, Cupar to act on their behalf in the sale.
18. On 17 January 2023 the applicants served upon the tenant a notice to quit and a notice in terms of section 33 (1) (d) of the Act. These notices were served on the respondent by recorded delivery post. Said notices became effective on 2 April 2023.
19. The notices informed the tenant that the applicants wished to seek recovery of possession using the provisions of section 33 of the Act.
20. The notices were correctly drafted and gave appropriate periods of notice as required by law.
21. The basis for the order for possession was accordingly established

Decision and reasons

22. When the 1988 Act was originally passed, the eviction process under section 33 was mandatory. The tribunal was required by law to grant the eviction order if satisfied that the required notices in terms of that section had been served upon the tenant.
23. Since 7 April 2020, in terms of changes initially made by the Coronavirus (Scotland) Act 2020 and then by the Coronavirus (Recovery and Reform) (Scotland) Act 2022, an eviction order on this basis can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order
24. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties

25. The Tribunal has a duty, in such cases, to consider the whole of the circumstances in which the application is made. It follows that anything that might dispose the tribunal to grant the order or decline to grant the order will be relevant. This is confirmed by one of the leading English cases, **Cumming v Danson**, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in an oft-quoted passage:

“[I]n considering reasonableness ... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad commonsense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account”.

26. In this case the tribunal finds that it is reasonable to grant the order.

27. The tribunal accepts that the applicants are entitled to sell the property and require to do so. There is no presumption, as a matter of law, in favour of giving primacy to the property rights of the landlord over the occupancy rights of the tenant, or vice versa. However, the tribunal accepts that the tenant is generally not opposed to the sale of the property and is willing to leave the property once she has obtained alternative accommodation. The respondent has sought assistance from the local council and has been told that she will be fully assisted in obtaining alternative accommodation only when an eviction order is granted and she faces actual homelessness

28. The respondent requires assistance from the relevant authorities in obtaining alternative accommodation. The council's homelessness prevention team have effectively advised the respondent that she will not obtain that assistance unless an eviction order is granted thus triggering specific statutory duties under the Housing (Scotland) Act 1987. The granting of the order will therefore ultimately (and almost counter intuitively) benefit the respondent in her attempts to obtain more suitable accommodation for herself and her son

29. The balance of reasonableness is weighted towards the applicants in this application

30. The tribunal also exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD

Decision

The order for recovery of possession is granted

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.

Jim Bauld

Legal Member/Chair

_____**12 January 2024**_____
Date