



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/23/3295

Re: Property at 22 Dalcross Way, Plains, Airdrie, ML6 7EG (“the Property”)

Parties:

Mrs Charlotte Simpson (nee Holden), 1 Cardiff Court, Glasgow, G40 4TJ (“the Applicant”)

Mr John MacDonald, Mrs Isobel MacDonald, 22 Dalcross Way, Plains, Airdrie, ML6 7EG (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and David Fotheringham (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and made an Order for Possession of the Property.

Background

1. By application, dated 19 September 2023, the Applicant sought an Order for Possession of the Property under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”), namely recovery of possession on termination of a Short Assured Tenancy. The application stated that the Property is to be sold.
2. The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Parties, commencing on 1 October 2017 at a rent of £570 per month, and, if not brought to an end on 1 October 2018, continuing on a monthly basis thereafter until terminated by either party, and a Rent Statement showing arrears as at September 2023 of £3,000, with no rent having been paid since April 2023. The Statement showed that the rent had been increased to £600 per month in March 2022 and that the Respondents paid the increased rent until April 2023. The Applicant also supplied copies of an AT5 Notice dated 1 October 2017, and of a Notice given under Section 33 of the 1988 Act and a Notice to Quit, both dated 21 June 2023, and both

requiring the Respondent to vacate the Property by 1 September 2023, with evidence of delivery of both Notices on 22 June 2023. The documents provided by the Applicant also included a copy of a Terms of Business agreement with Premier Properties, Uddingston, regarding their acting as agents for the Applicant in the sale of the Property.

3. On 16 November 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 7 December 2023. The Respondent did not make any written representations to the Tribunal.
4. On 3 January 2024, the Applicant's representatives advised the Tribunal that the arrears now stood at £4,800.

Case Management Discussion

5. A Case Management Discussion was held by means of a telephone conference call on the morning of 15 January 2024. The Applicant was represented by Miss Alexandra Wooley of Bannatyne, Kirkwood, France & Co, solicitors, Glasgow. The Respondents were not present or represented.
6. The Applicant's representative told the Tribunal that the rent arrears are now £5,400, with nothing at all paid since April 2023. The Applicant intends to sell the Property when she gains vacant possession, as the interest rate on her mortgage has increased and she wishes to pay it off. She also requires to assist her elderly parents, who are not in good health, with the costs of adaptations to their home. Miss Wooley advised that she understands the Respondents have 5 children, but she did not know how many of them are living in the Property.

Reasons for Decision

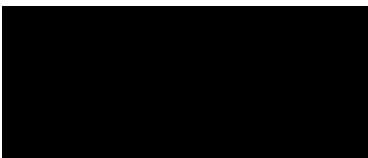
7. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.
8. Section 33 of the 1988 Act states that the Tribunal may make an Order for Possession of a house let on a Short Assured Tenancy if it is satisfied that the Short Assured Tenancy has reached its end, that tacit relocation is not operating, that no further contractual tenancy is for the time being in existence, that the landlord has given to the tenant notice stating that he requires possession of the house, and that it is reasonable to make the Order for Possession.
9. The Tribunal was satisfied that the tenancy had reached its end, that, by service of the Notice to Quit, tacit relocation was not operating, that there was no further contractual tenancy in existence between the Parties and that the Notice required under Section 33 of the 1988 Act had been properly given.

The remaining matter for the Tribunal to consider was, therefore, whether it would be reasonable to issue an Order for Possession.

10. In arriving at its decision as to whether it would be reasonable to make an Order for Possession, the Tribunal considered carefully all the evidence before it and noted in particular that the Respondents are understood to have 5 children, but have paid no rent whatever since April 2023 and have not offered any explanation for this and have made no attempt to engage with the Applicant or with the Tribunal process. They had not provided any written representations and had chosen not to be present or represented at the Case Management Discussion to explain any circumstances that they would wish the Tribunal to consider in deciding whether it would be reasonable to make an Order for Possession. The Applicant's mortgage interest rate has increased in the meantime and the Tribunal noted that she now wishes to sell in order to pay off the mortgage and to assist her elderly parents with the costs of adapting their home to meet their needs.
11. Having considered all the evidence, written and oral, before it, the Tribunal decided that it would be reasonable to make an Order for Possession of the Property.
12. The application is affected by The Cost of Living (Tenant Protection) (Scotland) Act 2022.

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

15 January 2024
Date