



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/23/2826

Re: Property at Appin, Stirlinghill, Boddam, AB42 3BE (“the Property”)

Parties:

Mr Paul Lewis Anderson, Millbank Farm, Boddam, Peterhead, AB42 3AN (“the Applicant”)

Miss Sharon Youngson, Appin, Stirlinghill, Boddam, AB42 3BE (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a possession order in terms of section 33 of the Housing (Scotland) Act 1988 be granted in relation to the property having determined that it is 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 17th August 2023 and accepted by the tribunal on 28th September 2023. A case management discussion was fixed in relation to the application for 19th December 2023 at 2pm.

Case Management Discussion

2. Mr Andrew Mackey solicitor for the Applicant attended the case management discussion to represent the Applicant. The Respondent attended and represented herself.

3. The tribunal had sight of the application, a tenancy agreement, a Form AT5, a notice to quit, a notice in terms of section 33 of the Housing (Scotland) Act 1988, postal certificates in relation to these notices, a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003, a letter sending this notice to Aberdeenshire council, authority from the landlord for solicitors to act in relation to the application and title sheets showing ownership of the property.

4. The Respondent had initially entered into a tenancy agreement at the property with a Mr Norrie in 1999. The property had passed to his wife on Mr Norrie's death and to their daughter on her death. The current landlord Mr. Anderson had inherited the property from his mother. The tenancy had continued on the same terms and conditions throughout, and Mrs Youngson had never signed any other contract. She accepted that the Applicant was the landlord and entitled to seek a possession order.

5. The tribunal legal member explained the nature of the application to the Respondent Mrs Youngson and what was required for the tribunal to make a possession order. Mrs Youngson confirmed that she had taken advice from Shelter regarding her position. and was not seeking an adjournment to take any further advice. Mrs Youngson indicated that she did not wish to be evicted and she would oppose immediate eviction. She referred to her husband having a mental health condition and her grandchild also lived at the property. A total of three adults and one child lived at the property. Mrs Youngson said she had applied to the local council for rehousing and had registered with other housing agencies. She had been told that she required to keep applying for properties and would either be successful in obtaining a property or not.

6. Mrs Youngson had lived at the property since 1999 in terms of a short, assured tenancy agreement which appeared to have continued on a month-to-month basis. Mrs Youngson said that she had only met the Applicant once she knew there had been a change of landlord and she believed she had received a letter from local solicitors Masson and Glennie about this.

7. Mrs Youngson indicated she had not signed any other tenancy agreement other than the original agreement. The section 33 Notice seen by the tribunal appeared to be a file copy, but Mrs Youngson confirmed that she had sight of a copy of the notice sent to her and that this was signed and dated.

8. Mrs Youngson indicated that certain repairs were required at the property and that she would like these done. She referred to a window at the property not being operable for more than three years. Ultimately Mrs Youngson said that she did not oppose a possession order but wanted as much time as possible to find alternative accommodation for her and her family and asked that if the tribunal granted an order that any order be extended to allow her sufficient time to be rehoused.

9. The tribunal legal member explained to Mrs Youngson that the application was affected by the Cost of Living (Tenant Protection) (Scotland) Act 2022 and as such in the event an order was granted the earliest that enforcement action could be taken would be after the end of March 2024 and that this itself might take some weeks, meaning that the earliest she might be required to vacate the property would be sometime in April 2024.

10. Mr Mackey for the Applicant indicated that he was seeking a possession order in terms of the legislation. He indicated there was no need to identify any fault on the part of the tenant and accepted there was no fault in relation to the application. He said that the landlord had complied with procedures, and the tenancy had come to an end. He pointed out that prior to changes in the legislation pre COVID-19 this would have been an automatic possession order in which the tribunal would have had no discretion. In terms of reasonableness, he explained that his client had inherited the property and he had produced evidence that his client was the owner of the property. He was aware that the Applicant had at least one other rental property, but he had no information to suggest that he had an extensive rental portfolio. He was aware that the Applicant operated a taxi firm but submitted that he was not a commercial landlord in the sense that property rental was not his business. Mr Mackey indicated that the applicant had not yet decided whether to sell the property but accepted that renovations would be required if the property were to be placed on the open market.

11. Mr Mackey further submitted that the question of any repairs was not one that he had any information upon, but his submission was that this was not relevant to the question of whether the order was granted or not. Mr Mackey opposed any extension to an order if an order was made, pointing out that the notices were sent to the respondent in May of 2023 giving her a good deal of time to anticipate the requirement to leave the property. He confirmed his understanding that if an order was granted the earliest time at which the order could be enforced would likely be sometime in April 2024 given the legislation which delayed enforcement of an application of this type. He said that he understood the Respondent's concern about an eviction order before Christmas 2023, but he hoped that if an order was granted arrangements could be made and this would avoid the need to enforce any order.

12. Mrs Youngson advised the tribunal that she understood that the Applicant rented out a number of properties including one next door to the current rented property and that he was a local businessman with a number of commercial interests.

13. The tribunal had sight of a notice to quit in proper form giving the Respondent notice to quit the property no later than 3rd August 2023 and a notice in terms of Section 33 of the Housing (Scotland) Act 1988 giving notice that the tenancy would terminate as of 3rd August 2023.

14. The tribunal had sight of a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 sent to Aberdeenshire council on 17th August 2023

15. 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

16. The Respondent entered into a short, assured tenancy with a Mr Herbert Norrie at the property with effect from 28th May 1999.

17. The initial tenancy term was 3rd December 2009 and the agreement stated that in the absence of notice been given by either party that the tenancy agreement would continue on a month-to-month basis.

18. The initial landlord Mr Norrie passed away and the property was inherited in turn by his wife and then his daughter, each of whom took over as landlord in terms of the tenancy agreement which continued.

19. The Applicant Mr Paul Anderson inherited the property, took over as landlord in terms of the tenancy agreement and became the registered owner of the property in March 2023.

20. The Respondent was aware that the Applicant had become the landlord at the property and accepted that the original tenancy had continued on the same terms and conditions

21. A Notice to Quit the property in proper form was sent to the Respondent on 29th May 2023 giving notice that she required to vacate the property by the 3rd of August 2023.

22. A notice in terms of section 33 of the Housing (Scotland) Act in proper form was sent to the Respondent on 29th May 2023 advising that the tenancy would come to an end on 3rd August 2023.

23. The short, assured tenancy has reached its end date as at 3rd August 2023.

24. No other contractual tenancy is in place in relation to the let property.

25. Tacit relocation is not operating in respect of the tenancy.

26. A notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was sent Aberdeenshire council by e-mail on 17th of August 2023 in relation to this application.

27. The Applicant is yet to decide on his long-term plans for the property but may ultimately sell it after it has been renovated.

28. The Respondent lives at the property with her husband, her son and grandchild.

29. The Respondent does not oppose a possession order being granted and has already contacted the local authority and housing associations in order to seek assistance in being rehoused.

Reasons for Decision

30. The tribunal was satisfied that the appropriate procedural requirements had been put in place to bring this tenancy to an end. The Respondent did not dispute that proper procedures had been carried out and appeared not to oppose a possession order

being granted. She has lived at the property for some considerable time along with her husband, son and her grandchild. She did not seek to suggest that they required to stay at the property and had made attempts to seek to be re housed before the case management discussion. In all of the circumstances the Tribunal considered that it was reasonable to grant a possession order.

The Tribunal considered whether to delay execution of the order as requested by the Respondent but did not do so given that the Notices were first served on the Respondent in May 2023 and the application is affected by the Cost of Living (Tenant Protection) (Scotland) Act 2022 which means that enforcement of the order granted in terms of this decision cannot take place until sometime in April 2024.

Decision

The Tribunal determined that a possession order in terms of section 33 of the Housing (Scotland) Act 1988 be granted in relation to the property having determined that it is 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.

Valerie Bremner

Legal Member/Chair

19.12.23
Date