



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2014.

Chamber Ref: FTS/HPC/EV/23/4554

Re: Property at Swallow Cottage, Broomilees Road, Melrose, TD6 9BE (“the Property”)

Parties:

Mr Laing Robson and Mrs Sophie Robson, Villa L76, District 7, Jumeirah Park, Dubai, United Arab Emirates (“the Applicants”)

Ms Alexandra Neil, Swallow Cottage, Broomilees Road, Melrose, TD6 9BE (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at Swallow Cottage, Broomilees Road, Melrose, TD6 9BE under Section 33 of the Housing (Scotland) Act 1988 be granted. The order will be issued to the Applicants after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with her goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicants or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 18 December 2023, the Applicants applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for recovery of possession the Property in terms of Rule 66 the First-

tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a copy of a Short Assured tenancy dated 12 February 2012 with a signed AT5, a letter to the Respondent dated 20 January 2022, a Notice to Quit and Section 33 Notice dated 14 September 2023 together with Sheriff Officer’s Execution of Service dated 15 September 2023, a rent statement, a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 and an email to Scottish Borders Council dated 18 December 2023.
3. On 13 March 2024, the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 22 April 2024. The Respondent required to lodge written submissions by 3 April 2024. This paperwork was served on the Respondent by Ellie McConnachie, Sheriff Officer, Edinburgh on 15 March 2024 and the Execution of Service was received by the Tribunal administration.
4. On 5 April 2024 the Applicants’ solicitor sent the Tribunal an application to amend the arrears to £5346 with an up to date rent statement. The Respondent was copied in on this email.

Case Management Discussion

5. The Tribunal proceeded with the CMD on 22 April 2024 by way of teleconference. The Applicants was represented by Ms Grosvenor from Harper MacLeod, Solicitors. There was no appearance by or on behalf of the Respondent despite the teleconference starting 5 minutes late. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in her absence. The case was heard with an application for arrears under reference FTS/HPC/CV/23/4555.
6. The Tribunal had before it the Short Assured tenancy dated 12 February 2012 with a signed AT5, the letter to the Respondent dated 20 January 2022, the Notice to Quit and Section 33 Notice dated 14 September 2023 together with Sheriff Officer’s Execution of Service dated 15 September 2023, an up to date rent statement to April 2024, a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 and an email to Scottish Borders Council dated 18 December 2023. The Tribunal noted the terms of these documents.
7. Ms Grosvenor asked the Tribunal to grant an eviction order. She submitted this was a properly constituted Short Assured Tenancy with reference to the tenancy agreement and the AT5. The AT5 was served by hand and signed by the Respondent. The Applicants had served a Notice to Quit and a Section 33 Notice and served a Section 11 Notice on the local council.

8. With regard to reasonableness, the Tribunal noted her written submissions that the Applicants were moving back to Scotland from Dubai. She made further submissions that the Respondent had fallen into arrears which stood at £ 5346 with the monthly rent being £600. The arrears had accrued since April 2023. The Respondent had made no effort to make an arrangement to pay off the arrears or bring rental payments up to date. The last payment was on 1 October 2023. The Respondent is about 8 months in arrears. She submitted she understood the Respondent lived in the Property with her adult son. The Respondent had been in contact with the Local Authority who had contacted Ms Grosvenor on 21 September 2023 and had asked for a copy of the rent statement which she had then sent. Ms Grosvenor had heard nothing more from the Local Authority. There had been some contact with the Respondent in March with regards to access to the Property for gas servicing but there was no further contact.

Findings in Fact

9. The Applicants entered into a Short Assured Tenancy Agreement dated 12 February 2012. The Respondent received an AT5 and signed this.
10. In terms of the Short Assured Tenancy Agreement the tenancy commenced on 16 March 2012 and continued until 16 September 2012 both dates inclusive. Parties agreed that the tenancy would continue thereafter on a monthly basis until terminated.
11. The Applicants' solicitor served a Notice to Quit and Notice in terms of Section 33 of the Housing (Scotland) Act 1988 both dated 14 September 2023. These were served on the Respondent by Sheriff Officer on 15 September 2023. The Notice to Quit and the Section 33 Notice expired on 17 November 2023.
12. The Short Assured Tenancy reached its end as at 17 November 2023.
13. *Tacit relocation* is not operating. The contractual Short Assured Tenancy had been brought to an end on 17 November 2023.
14. The Respondent is in arrears of rent of £5346. The last payment of rent was on 1 October 2024.
15. The Applicants wish to return from Dubai to live in the Property.
16. The Respondent lives in the Property with adult son.
17. The Applicants' solicitor served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on Scottish Borders Council on 18 December 2023.

Reasons for Decision

18. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the oral submissions made by Ms Grosvenor at the CMD. The Tribunal concluded that the Applicants were entitled to seek repossession of the Property under Section 33 of the Housing (Scotland) Act 1988. There was a properly constituted Short Assured Tenancy with the Respondent. The Tribunal was satisfied that the statutory provisions of Section 33 of the Housing (Scotland) Act 1988 had been met namely that the Short Assured Tenancy had reached its end (termination date); the Notice to Quit brought the contractual Short Assured Tenancy to an end, and that the Applicants had given the Respondent notice in terms of Section 33(1)(d) of the Housing (Scotland) Act 1988 stating that possession of the property was required by 17 November 2023.
19. The terms of Section 33 of the Housing (Scotland) Act 1988 would normally entitle the Applicants to a right of mandatory repossession of the Property. In terms of Schedule 1, paragraph 3 (4) of the Coronavirus (Scotland) Act 2020 the Applicants also have to satisfy the Tribunal that it is reasonable to evict. In determining whether it is reasonable to grant the order the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal gave weight to the Respondent being eight months in arrears and that she had not been in contact with the Applicants to make any arrangement to clear these. Further the Tribunal gave weight to the Applicants' desire to return from Dubai to live in the Property. The Tribunal considered that Ms Neil had not opposed the application. Whilst the Tribunal acknowledged that Ms Neil lived with her son, it appeared to the Tribunal on the basis of the submissions from Ms Grosvenor which it accepted, that her son was an adult and not a child. The balance of reasonableness in this case weighted towards the Applicants. The Tribunal find it would be reasonable to grant the order.
20. In the circumstances the Tribunal considered that in terms of Section 33 of the Housing (Scotland) Act 1988 as amended it was reasonable to grant an eviction order.

Decision

21. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

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 Chair

22 April 2024

Date