



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 19 and 33 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/23/3917

Re: Property at 15A Avon Place, Linlithgow, West Lothian, EH49 6BL (“the Property”)

Parties:

Ms Lynn Bain, Mr Alasdair Bulloch, Three Lairds, Manse Road, Linlithgow, West Lothian, EH49 6AU; Three Lairds Manse Road, Linlithgow, West Lothian, EH49 6AU (“the Applicants”)

Ms Nancy Osbourne, 15A Avon Place, Linlithgow, West Lothian, EH49 6BL (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Tony Cain (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction should be granted.

1. On 7th November 2023 the Applicant lodged an Application with the Tribunal under Rule 66 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property.
2. Lodged with the application were: -
 - a. Short Assured Tenancy Agreement dated 4th March 2013 and initially running from 4th March 2013 to 4th September 2013 and monthly thereafter and with monthly rent of £425;

- b. AT5 Notice dated 4th March 2013;
 - c. Notice to Quit dated 1st May 2023 for 4th November 2023;
 - d. Section 33 Notice dated 1st May 2023 for 4th November 2023;
 - e. Sheriff Officer's Certificate of Service of 3 and 4
 - f. Section 11 Notice and proof of service.
3. The Application was served on the Respondent by Sheriff Officers on 13th March 2024.

Case Management Discussion

4. The Case Management Discussion ("CMD") took place by teleconference. The Applicant was represented by Miss Hepworth of the letting agent, Almond Valley Property Centre. There was no attendance by the Respondent, nor by any representative on her behalf.
5. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.
6. Miss Hepworth sought an order for eviction in terms of sections 19 and 33 of the Housing (Scotland) Act 1988. She said that the notices had been served and the Applicants wished to sell the property and that the respondent had been advised of that. She said that at the moment local authorities will not assist a tenant until they have an order of eviction from the Tribunal.
7. The Tribunal asked for some details about the tenant. Miss Hepworth said that she was a single lady, and the property was one bed roomed. She had kept the tenancy well and there were no rent arrears. She was not in employment. Miss Hepworth's agency had tried to assist her in finding alternative accommodation but there was nothing available. She had been in touch with the local authority and some housing associations. She does not have the internet or a mobile phone, only a landline.
8. Miss Hepworth said that the Applicants had had a portfolio of properties but they were selling them off. Her agency had managed two and the other one had been sold after the tenant died.

Findings in Fact

- i. The parties entered into a Short Assured Tenancy Agreement in respect of the property;
- ii. The tenancy commenced on 4th March 2013, with the initial term being from 4th March 2013 to 4th September 2013, and monthly thereafter;
- iii. Notice To Quit and Section 33 Notice were served timeously and correctly;

- iv. The Application was served on the Respondent by Sheriff Officer on 13th March 2024;
- v. The property has one bedroom;
- vi. The Respondent is a single lady, not in employment, and the property has not been adapted for her use;
- vii. The Applicants wish to sell.

Reasons For Decision

9. The Tribunal were satisfied that the ground of eviction was established.

Section 44 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022 states:

Assured tenancies: discretionary eviction grounds

(1)The Housing (Scotland) Act 1988 is modified as follows.

(2)In section 18 (orders for possession)—

(a)subsections (3) and (3A) are repealed,

(b)in subsection (4), for “Part II” substitute “Part I or II”,

(c)in subsection (6)(a), the words “or Ground 8” are repealed,

(d)in subsection (8), for “subsections (3A) and (4A)” substitute “subsection (4A)”.

(3)In section 19 (notice of proceedings for possession), subsection (5) is repealed.

(4)In section 20 (extended discretion of First-tier Tribunal in possession claims)—

(a)in subsection (1), for “Subject to subsection (6) below, the” substitute “The”,

(b)subsection (6) is repealed.

(5)In section 33(1) (recovery of possession on termination of a short assured tenancy)—

(a)in the opening words, for “shall” substitute “may”,

(b)after paragraph (b), the word “and” is repealed,

(c)after paragraph (d) insert “, and

“(e)that it is reasonable to make an order for possession.”.

(6)In schedule 5 (grounds for possession of houses let on assured tenancies)—

(a)in Part I, Ground 8 is repealed,

(b)the heading of Part I becomes “Certain grounds on which First-tier Tribunal may order possession”,

(c)the heading of Part II becomes “Further grounds on which First-tier Tribunal may order possession”.

The Tribunal now has to decide if it is reasonable to grant the eviction order.

10. The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Tribunal considered all the facts before it. The Applicants wished to sell the property and the Respondent had not attended the CMD to say that she was opposed to it. There were no extenuating circumstances for example small children in the property or persons with disabilities. The Tribunal considered in those circumstances that it was reasonable to grant the order. As this was an eviction based on “no fault” grounds, and as the Respondent had kept a good tenancy and did not have rent arrears, the Tribunal considered it reasonable to suspend extract of the order until 18th June 2024.

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.

A. Kelly

18 April 2024

Legal Member/Chair

Date