



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/23/4322

Re: Property at 73 Hazeldene, Methil, Fife, KY8 2JN (“the Property”)

Parties:

Mr David Stewart, 37 Glenorchill View, Auchterader, Perthshire, PH3 1LU (“the Applicant”)

Mr Scott Wood, Miss Tracy Stewart, 73 Hazeldene, Methil, Fife, KY8 2JN (“the Respondent”)

Tribunal Members:

Nairn Young (Legal Member) and Eileen Shand (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

- Background

This is an application for an order for recovery of possession of the Property, which is let to the Respondents by the Applicant in terms of a short assured tenancy. It called for case management discussion at 10am on 30 May 2024, by teleconference. The Applicant was on the line in-person and was represented by Ms Anna Rossiter of Premier Rentals Fife Ltd.. The Respondents were on the line in-person.

- Findings in Fact

The relevant facts were not in dispute between the parties, as follows:

1. The Respondents let the Property from the Applicant in terms of a short assured tenancy with an initial term of 28 April 2017 to 29 October 2017, and running from month to month thereafter, unless terminated, in the case of the landlord, on two months' notice.
2. On 6 September 2023, the Applicant sent notices to quit to the Respondents, terminating the tenancy on 29 November 2023, along with notices in terms of s.33 of the Housing (Scotland) Act 1988 ('the Act') indicating that he required vacant possession of the Property no later than 30 November 2023.
3. The Respondents live at the Property with their three children, aged 14, 10 and 8.
4. The children attend local schools and both Respondents have jobs locally.
5. Since receiving notice to quit, the Respondents have contacted the local authority to ask if they can be rehoused by them or by a housing association. They were informed that their case will not be given priority unless and until an order for their eviction is granted.
6. The Respondents have also been looking for private rented accommodation, but have not found anything suitable locally.
7. The Applicant is struggling to pay the mortgage on the Property and another rental property he owns and has concluded he needs to sell for that reason.
8. There is a disparity of approximately £180 between the amount the Applicant receives in rent from the Property and his mortgage repayments.
9. The Property is in need of refurbishment work before it could be re-let by a prospective buyer. The Applicant is unable to afford this.

10. The Respondents had some arrears of rent at the end of last year due to having to pay for funeral expenses for a relative. These were cleared by March of 2024 and the rent account is currently up-to-date.

11. The Respondents were offered a house by the local authority during the period their rent account fell into arrears; but this fell through because they were not able to get a reference, due to the arrears.

- Reasons for Decision

12. There was no suggestion in this case that the Applicant had failed to follow the correct procedure to terminate the tenancy or meet the other formal requirements of s.33 of the Act. The only issue for determination was therefore whether or not it was reasonable for an order for possession to be made.

13. The Tribunal considered this a finely balanced case. The fact that the Respondents both have jobs locally and their children attend school locally weighed significantly against granting an order. As they pointed out, even if the local authority does now take action to find them a home, it may be some distance away. The Tribunal did also feel that, to some extent at least, the financial issues now being experienced by the Applicant were due to some mismanagement of his assets. In particular, the poor condition of the Property was part of the reason being advanced for why it could not be sold with tenants *in situ*; but that would be appear to be a situation of the Applicant's own making.

14. Nonetheless, looking at the whole circumstances, the Tribunal felt that it was clear that the current situation was not a stable one. If it were not to grant an order at this point, the most probable outcome would be that the Applicant would have to default on his mortgage repayments and the Property would be repossessed. That would simply lead to an application being made by the mortgage company for possession of the Property at that point. In the

meantime, none of the work that needed to be done on the Property could be completed.

15. It is clear that the local authority will prioritise the Respondents' case only if an order is granted. If that order is made at this point, their eviction from the Property will not take place until the school summer holidays. It is to be hoped, given that a property was identified for them previously, that they can be re-housed and settled into new accommodation prior to the schools restarting and thus minimise disruption to their children's education. The Tribunal therefore considers this a better outcome for all involved, than to attempt to maintain the *status quo*, when that is ultimately unsustainable.

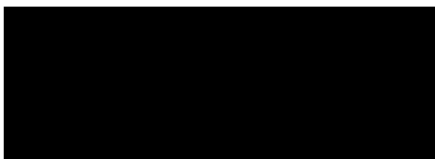
16. For this reason, the Tribunal concluded it is reasonable for the order to be granted.

- Decision

Order for possession 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.



30th May 2024

Legal Member/Chair

Date

