



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 (“the 1988 Act”)

Chamber Ref: FTS/HPC/EV/24/1079

Re: Property at 92 Pennelton Place, Bo'ness, EH51 0PE (“the Property”)

Parties:

Mrs Kristene Spalding, Miss Jan McCorkindale, 10 Hunter Grove, Bathgate, West Lothian, EH48 1NW; 9 Oaklands, Builth Wells, Powys, LD2 3EN (“the Applicants”)

Laura Hanna, 92 Pennelton Place, Bo'ness, EH51 0PE (“the Respondent”)

Tribunal Members:

Susan Christie (Legal Member) and John Blackwood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondent in favour of the Applicants.

Background

1. The application made by the Applicants is for an order for possession of the Property in terms of Section 33 of the 1988 Act.
2. The Applicants produced along with the application a copy of the signed original short- assured tenancy agreement (“SAT”), AT5 with acknowledgment of receipt, Notice to Quit, Section 33 Notice and Section 11 Notice in terms of the Homelessness Etc. (Scotland) Act 2003 served on the relevant local authority, along with ancillary documentation regarding the former partner of the Respondent having left the Property and relinquishing his interest and one half pro-indiviso share of the Property title passing from husband to wife. The Applicants also referred a Decision of the Tribunal rejecting an earlier application by them due to the appropriate paperwork not being produced. It was helpful to a degree, as it clarified the term of the SAT and *ish*, and it had been considered by the Applicants when making this application.

3. The paperwork was served by the Tribunal on the Respondent and the proper intimations were sent to the Parties assigning a Case Management Discussion.

The Case Management Discussion

4. The Case Management Discussion (CMD) took place on 10 July 2024 by Conference call. All Parties participated. The reason for the CMD was explained to the Parties and the paperwork produced was examined and discussed.
5. The Applicants explained to the Tribunal that they are sisters who jointly own the Property. They have a letting agent and now find that they cannot financially afford to keep the Property on, have financial difficulties and wish to sell the Property, realise the Capital and use it to pay off debts and fund a wedding. The rent itself is paid directly to the letting agent by a combination of Local Housing Allowance and direct payments. One Applicant is now retired and relies on a pension income and the residue rent for the Property and sees the sale as the only current route to paying off debts.
6. The Respondent explained that she lives in the Property with her three children aged 19, 16 and 7 years. The eldest is at college and the middle one has just left school. The youngest attends a local school. The Property itself is a three bedroom house and is not entirely suitable for the family as the youngest shares a room with her. In addition, repairs had been needed to the Property that took a long time to fix and for a period rent was withheld to try to resolve that. The Respondent had been told at the outset that the Property was eventually to be sold and this was mentioned from time to time, but the Landlords kept changing their mind on it. The Respondent had no difficulty moving out of the Property. She had applied to different local authorities for housing as she was not in a financial position to look for another private let. She had sought and obtained housing advice to seek local authority housing. Progress on this has been slow and she has been trying since 2020 to get another property following on from her Partner leaving the Property. She now bids for properties in one local authority area on a weekly basis. She did not need to stay in the immediate area, but that was her eldest child's preference and she had also applied for housing in her own right. The family rely solely on her income and by reason of the rent being withheld for a period for the outstanding repairs, there was now an arrears balance of £743.43 that was being repaid through an agreed deduction from her income. This has affected her finances.
7. The Parties were advised that the matter could be determined at the CMD without a Hearing and could decide where there were no contentious issues that needed to be resolved. The Parties understood this and did not identify any issues in dispute. The tribunal adjourned for a period to deliberate and then reconvened the CMD.

Findings in Fact

8. The Applicants are the owners and Landlords of the Property.
9. The First Named Applicant became the joint Landlord when she acquired her husband's one-half *pro indiviso* share of the Property.

10. The Respondent and her former partner entered into a Short Assured Tenancy over the Property with a date of entry of 18 February 2011.
11. The Respondent's former partner terminated his interest in the tenancy on 12 August 2020. Since then the Respondent has taken full responsibility for it.
12. The Applicants served a Notice to Quit and Section 33 (of the Act) Notice on 6 December 2023.
13. A section 11 Notice in terms of the Homelessness Etc. (Scotland) Act 2003 was served on the relevant local authority.
14. The Applicants indicated to the Respondent at the outset of the tenancy that they may wish to sell the Property.
15. The Applicants now wish to recover the Property to sell it and realise the Capital to allow them to use the funds for their own respective purposes, namely, to clear debts and fund a wedding.
16. One Applicant is now retired and relies on a pension income sees the sale as the only current route to paying off debts.
17. The Respondent lives in the Property with her three children aged 19, 16 and 7 years.
18. The Respondent's circumstances have materially changed since the tenancy began.
19. The Respondent now lives alone in the Property with her children.
20. The Property size is no longer entirely suitable for the Respondent's needs.
21. The Respondent has been trying to secure alternative local authority accommodation for some time and progress has been slow.
22. The Respondent is paying back a shortfall in rent for a time when repairs were not promptly attended to and rent was withheld, and this is having a knock on effect on her finances.
23. The Respondent's sole income position would not support another private let.
24. The Respondent has prepared to leave the Property and is applying for alternative local authority accommodation.

Reasons for Decision

25. The Tribunal was satisfied at the CMD that it had sufficient information upon which to do so and would not prejudice the interest of the Parties. The Tribunal did not consider that a Hearing was needed as there were no controversial matters to be resolved.
26. The Tribunal was satisfied that a valid Notice to Quit had been served along with a Section 33 Notice under the Act and that the SAT had reached its finish, tacit relocation was not operating.
27. Intimation of the application had been made on the relevant local authority by way of a Section 11 Notice, as required.
28. The Tribunal then considered whether it was reasonable to grant an eviction order. The Tribunal accepted the Applicants reasons given for the making of the Application that they cannot financially afford to keep the Property on, have financial difficulties and wish to sell the Property, realise the Capital and use it to pay off debts and fund a wedding. One Applicant is now retired and relies on a pension income and the residue rent for the Property and sees the sale as the only current route to paying off debts. The Tribunal accepted the information given by the Respondent that she lives in the Property with her three children aged 19, 16 and 7 years. The eldest is at college and the

middle one has just left school. The youngest attends a local school. The Property itself is a three bedroom house and is not entirely suitable for the family as the youngest shares a room with her. In addition, repairs had been needed to the Property that took a long time to fix and for a period rent was withheld to try to resolve that. The Respondent had been told at the outset that the Property was eventually to be sold and this was mentioned from time to time, but the Landlords kept changing their mind on it. The Respondent had no difficulty moving out of the Property. She had applied to different local authorities for housing as she was not in a financial position to look for another private let. She had sought and obtained housing advice to seek local authority housing. Progress on this has been slow and she has been trying since 2020 to get another property following on from her Partner leaving the Property. She now bids for properties in one local authority area on a weekly basis. She did not need to stay in the immediate area, but that was her eldest child's preference and she had also applied for housing in her own right. The family rely solely on her income and by reason of the rent being withheld for a period for the outstanding repairs, there was now an arrears balance of £743.43 that was being repaid through an agreed deduction from her income. This has affected her finances. The Tribunal determined that it was reasonable to grant an order for eviction and allow the Applicants to sell the Property and so utilise the Capital and meet their financial needs. The Respondent had given reason as to why the Property was not entirely suitable for her needs and due to that and the changes in her circumstances, she has already taken steps to seek local authority accommodation. The Tribunal determined that having regard to both Parties respective positions that to grant the order was reasonable.

29. The Tribunal therefore determined to make an eviction order. The decision of the tribunal is 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.

Susan Christie

Legal Member/Chair

10 July 2024
Date