



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/EV/23/4084

Re: Property at 10K Craufurdland Road, Kilmarnock, KA3 2HT (“the Property”)

Parties:

Mr David Cavanagh, 12 Union Street, New Mills, KA16 9AZ (“the Applicant”)

Mr Mariusz Biniak and Mrs Katarzyna Wit Biniak, 10K Craufurdland Road, Kilmarnock, KA3 2HT (“the Respondents”)

Tribunal Members:

Shirley Evans (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondents for possession of the Property at 10K Craufurdland Road, Kilmarnock, KA3 2HT under Section 33 of the Housing (Scotland) Act 1988 be granted. The order will be issued to the Applicant 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 Respondents. The order will include a power to Officers of Court to eject the Respondents and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

1. This is an action for recovery of possession of the Property raised in terms of Rule 66 of 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 tenancy agreement dated 19 October 2016 between the Applicant and the Respondents, an

AT5 dated 17 October 2015, a Notice to Quit and Section 33 Notice dated 5 July 2023, post office receipts dated 26 October 2023 and 3 November 2023, Royal Mail Track and Trace receipts dated 27 October 2023 and 6 November 2023, a rent statement, bank statements, a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 to East Ayrshire Council dated 10 November 2023 and an acknowledgement from East Ayrshire Council dated 14 November 2023.

3. The Tribunal thereafter made various enquiries of the Applicant regarding the service of the Notice to Quit and Section 33 Notice and the AT5. The Applicant advised that it had been agreed between the Respondents and his letting agents to communicate by email as this was their preferred method so that they could use a translator service to translate any correspondence into Polish. The Notice to Quit and Section 33 Notice were also served on the Respondents by post. The Applicant advised that the original tenancy commenced on the 30 October 2015. The AT5 was created at that time. The lease was renewed on the 30 October 2016 and no further AT5 was required. The Applicant forwarded copy emails dated the 5 and 7 July 2023 addressed to the Respondents enclosing copies of the Notice to Quit and the Section 33 Notice and letters to the Respondents in English and Polish dated 18 and 25 October 2023 and 3 November 2023.
4. On 19 June 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 29 July 2024. The Respondents required to lodge written submissions by 10 July 2024. This paperwork was served on the Respondents by Chelsea Murray, Sheriff Officer, Glasgow on 20 June 2024 and the Execution of Service was received by the Tribunal administration.
5. The Respondents did not lodge any written representations by 10 July 2024.
6. On 19 July 2024 the Applicant emailed the Tribunal with further documents regarding right to entry requests made in both English and Polish dated 22 and 28 June 2023 and 11 July 2023, a rent statement to the 18 July 2024 showing arrears of £7451 and an email dated 4 January 2024 from PCKwikFix advising the Respondents' email address no longer existed.

Case Management Discussion

7. The Tribunal proceeded with the CMD on 29 July 2024 by way of teleconference. The Applicant appeared and represented himself. He was supported by his colleague Allison Patterson. There was no appearance by or on behalf of the Respondents despite the teleconference starting 5 minutes late. The Tribunal was satisfied the Respondents had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in their absence. The case was heard with an application for eviction under reference FTS/HPC/CV/23/4084.

8. The Tribunal had before it the tenancy agreement dated 19 October 2016 between the Applicant and the Respondents, the AT5 dated 17 October 2015, letters to the Respondents in English and Polish dated 18 and 25 October 2023 and 3 November 2023, post office receipts dated 26 October 2023 and 3 November 2023, Royal Mail Track and Trace receipts dated 27 October 2023 and 6 November 2023, the rent statement to 18 July 2024, bank statements and the email from PCKwikFix dated 4 January 2024. The Tribunal considered the terms of these documents.

9. The Applicant explained that the Notice to Quit and the Section 33 Notices had been served by both email and by post. The Respondents had indicated they wanted to communicate by email. His letting agent communicated in both English and Polish with the Respondents. The Applicant explained he was still seeking an eviction order. He had had no rent paid since October 2023. With reference to the rent statement lodged the Tribunal noted the monthly rent was £575 in terms of the tenancy agreement and that the arrears to 18 July 2024 stood at £7451.

10. Mr Cavanagh went on to explain that there had been a dispute between Mr Biniak and his letting agents as he accused them of harassment. There had been various issues with the Respondents refusing to give access. They had had to go to the Housing Tribunal to gain a warrant for entry. No-one was allowed in except the tradesman. He was not aware of any recent correspondence with the Respondents other than his letting agents had been recently contacted regarding an insurance claim Mr Biniak had recently made, of which they knew nothing. The Council Tax Department had also been in contact enquiring about new tenants, but they had explained the Respondents still lived in the tenancy.

11. Mr Cavanagh understood the Respondents had separated and that Mr Biniak still lived in the Property. They had two young children. There had been no issues with the tenancy when the Respondents were together. He was not aware of any outstanding benefits issues. The arrears were causing him stress and anxiety and he now just wanted to sell the Property.

Findings in Fact

12. The Applicant entered into a Short Assured Tenancy Agreement dated 19 October 2016 commencing on 30 October 2016 with the Respondents. This was a continuation of a previous Short Assured Tenancy form 2015. The Applicant served an AT5 on the Respondents on 17 October 2015.

13. In terms of the Short Assured Tenancy Agreement the tenancy commenced on 30 October 2016 and continued until 30 October 2018. There was no contractual clause regarding the tenancy continuing. The tenancy was continuing after 30 October 2016 on a yearly basis

14. The Applicant's agent served a Notice to Quit and Notice in terms of Section 33 of the Housing (Scotland) Act 1988 both dated 5 July 2023. These were served on the Respondents by post on 5 July 2023 and by email of 5 and 7 July 2023. The Notice to Quit and the Section 33 Notice expired on 30 October 2023.

15. The Short Assured Tenancy reached its end at 30 October 2023.

16. *Tacit relocation* is not operating. The contractual Short Assured Tenancy had been brought to an end by the Notice to Quit on 30 October 2023.

17. The monthly rent is £575 in terms of clause 3.1 of the tenancy agreement. The Respondents are in arrears of rent of £7451

18. The Applicant wishes to sell the Property.

19. The Respondents are separated. Mr Biniak lives in the Property alone.

20. The Applicant served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on East Ayrshire Council. The Council acknowledged receipt of the Section 11 Notice on 14 November 2023.

Reasons for Decision

21. 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 Mr Cavanagh at the CMD. The Tribunal concluded that the Applicant was 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 Respondents. 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 ish (termination date); the Notice to Quit brought the contractual Short Assured Tenancy to an end, and that the Applicant had given the Respondents notice in terms of Section 33(1)(d) of the Housing (Scotland) Act 1988 stating that possession of the property was required by 30 October 2023.

22. The terms of Section 33 of the Housing (Scotland) Act 1988 would normally entitle the Applicant to a right of mandatory repossession of the Property. In terms of Schedule 1, paragraph 3 (4) of the Coronavirus (Scotland) Act 2020 the Applicant also has 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 Respondents being in substantial arrears and that they had not been in contact with the Applicant to make any arrangement to clear these. The Tribunal also considered the issues that the Applicant had had in gaining access to the Property but gave little weight to these. However, the Tribunal was of the opinion that it appeared the relationship with the tenants had broken down with accusations of harassment. Further the Tribunal gave weight to the Applicant's wish to sell the Property and the stress he was under with the arrears. The Tribunal considered that the Respondents had not opposed the application and lived alone at the Property. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.

23. 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

24. 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.

Shirley Evans

29 July 2024

Legal Member

Date