



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in respect of an application under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”) and in terms of Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/EV/24/1118

Re: Property at 19c Bank Street, Irvine, KA12 0AJ (“the Property”)

Parties:

Fiona Joyce Cowan, 8 Tammy Dale's Road, Kilwinning, KA13 7PB (“the Applicant”) per her agents, Kilpatrick & Walker, Solicitors, 4, Wellington Square Ayr KA7 1EN (“the Applicant’s Agents”)

Miss Samantha Chambers, 19c Bank Street, Irvine, KA12 0AJ (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Gerard Darroch (Ordinary Member)

Decision.

The Tribunal, having found the Ground for eviction had been met and being satisfied that it is reasonable to grant the Order, grants the Application and makes an Order for eviction.

Background

1. By application received between 7 March 2024 (“the Application”), the Applicant’s Agents applied to the Tribunal for an Order for eviction and possession of the Property based on the tenancy being terminated in terms of Section 33 of the 1988 Act.
2. The Application comprised the following:

- i) copy short assured tenancy agreement between the Parties commencing on 20 May 2009 with relevant AT5;
 - ii) copy Notice to Quit and copy Notice in terms of Section 33 of the 1988 Act together with proof of service and
 - iii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to North Ayrshire Council being the relevant local authority;
3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") was fixed for 5 August 2024 at 14.00 by telephone conference.
 4. The CMD was intimated to both Parties, and, in particular, was intimated to the Respondent by Sheriff Officer service on 27 June 2024. The intimation gave an erroneous time of 10.00 and not 14.00. This error was discovered prior to the CMD and the correct time of 14.00 was notified to the Parties by first class post on Friday 2 August 2024.

CMD

5. The CMD took place on 5 August 2024 at 14.00 by telephone. The Applicant did not take part and was represented by Mr. Walker of the Applicant's Agents. The Respondent did not take part and was not represented. The Respondent did not call the telephone conference line at 10.00 as intimated by Sheriff Officers and did not call the telephone conference line at 14.00 as advised in the letter of 2 August 2024. The Tribunal was satisfied that the Respondent had been notified of the CMD and so proceeded in her absence.
6. Mr. Walker confirmed that the Applicant sought an eviction Order. With regard to the background of an Order being sought, Mr. Walker explained that there had been several serious issues with the tenancy which brought the Applicant to the decision to terminate the tenancy at its contractual end. Mr. Walker explained that there are now rent arrears of £5,499.97, that there have been neighbour complaints of anti-social behaviour including drug taking, dog fouling and damage to the common close entry system to the extent that there has been involvement of both Police Scotland and North Ayrshire Council. Mr. Walker advised that there has been an ongoing issue with rent arrears since the tenancy began and that the antisocial behaviour has been continuing over the last few years.
7. With regard to the Respondent, Mr. Walker stated that he understood the Respondent to be a single person who lives alone with no children although, the Respondents had had a partner reside with her without the Applicant's permission at some point during the tenancy.

Findings in Fact

8. From the Application and the CMD, the Tribunal made the following findings in fact: -
- i) There is a short assured tenancy of the Property between the Parties;
 - ii) The correct statutory procedure has been carried out to bring the tenancy to a contractual end on 20 February 2024;
 - iii) Tacit relocation is not operating;
 - iv) The Respondent remains residing in the Property;
 - v) The Respondent has not opposed the Application;
 - vi) The Respondent has accrued rent arrears of £5,499.97;
 - vii) The Respondent has engaged in anti-social behaviour causing neighbours to complain to the local authority;
 - viii) Police Scotland have taken action in respect of the Respondent's behaviour at the Property;
 - ix) The Respondent is a single person and there are no children residing in the Property.

Issue for the Tribunal

9. The issue for the Tribunal was to determine whether or not to grant the Order sought.
10. The Ground on which the Application proceeds is that the tenancy has been ended in terms of Section 33 of the 1988 Act. The Tribunal is satisfied that the correct statutory process has been carried out to end the tenancy. Section 33 of the 1988 Act also states the Tribunal must be satisfied that it is reasonable to issue an eviction order.
11. The statutory ground being established, and the Application not being opposed, the issue for the Tribunal was to determine if it is reasonable to grant the Order. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "*may do anything at a case management discussionincluding making a decision*". The Tribunal took the view that it had sufficient information to make a decision on reasonableness and so proceeded to determine the Application.

Decision and Reasons for Decision

12. The Tribunal must establish, consider and properly weigh the "whole of the circumstances in which the application is made" (Barclay v Hannah 1947 S.C. 245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.
13. The Tribunal then looked to balance the rights and interests of both parties.

14. The Tribunal accepted that the Applicant finds the Respondent's conduct so intolerable that she has no option but to end the tenancy. The Tribunal had regard to the fact that the Respondent is a single person with no dependants, that she is engaging in anti-social behaviour and has accrued rent arrears.

15. On balance, the Tribunal took the view that not granting the Order would have a significantly greater detrimental impact on the Applicant in respect of her role and status as a landlord and her relationship with the neighbouring proprietors than it would on the Respondent whose unacceptable behaviour has brought about the end of the tenancy. Accordingly, the Tribunal is satisfied that it is reasonable to grant the Order and so grants the Application.

16. This decision is unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by a 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.

K Moore

Legal Member

5 August 2024

Date