



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

Chamber Ref: FTS/HPC/EV/23/4240

Re: Property at 107 Hareburn Road, Tillicoultry, FK13 6DA (“the Property”)

Parties:

RKH and A Property Investments Ltd, 14 King Street, Stirling, FK8 1AH (“the Applicant”)

Ms Pauline Domanska, 107 Hareburn Road, Tillicoultry, FK13 6DA (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Eileen Shand (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 28th 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 Respondents from the property.
2. Lodged with the application were: -
 - a. Short Assured Tenancy Agreement dated 12th November 2012 and initially running from 12th November 2012 to 12th May 2013 and monthly thereafter, and with monthly rent of £400
 - b. AT5 Notice dated 12th November 2012;
 - c. Notice to Quit dated 6th September 2023 for 12th November 2023
 - d. Section 33 Notice dated 6th September 2023 for 12th November 2023
 - e. Proof of Service of 3 and 4

- f. Section 11 Notice;
 - g. Proof of Service of Section 11 Notice
3. The Application was served on the Respondent by Sheriff Officers on 9th February 2024.

Case Management Discussion

4. The Case Management Discussion (“CMD”) took place by teleconference. The Applicant was represented by Miss McKenna of the letting agent, Martin & Co. 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 also that it was reasonable for the Tribunal to grant the order.
6. Miss McKenna sought an order for eviction in terms of sections 19 and 33 of the Housing (Scotland) Act 1988.
7. The Tribunal were satisfied, on the basis that the Notice to Quit and Section 33 Notice had been served timeously and correctly, that the ground had been established.
8. The Coronavirus (Recovery and Reform) (Scotland) Act 2022 amended the Housing (Scotland) Act 1988 to the effect that it is no longer mandatory to grant eviction in these circumstances, and the Tribunal now needs to decide if it is reasonable to grant the order.
9. The Tribunal asked Miss McKenna to address it on reasonableness. Miss McKenna explained that the Applicant wished to sell the property. It is in dire need of refurbishment and the Applicant wishes to carry out that work prior to selling. Miss McKenna was not sure what other information was required to establish reasonableness. After questions from the Tribunal she said that she was not aware of anyone living in the property with the Respondent, there were no rent arrears, the Respondent contacted the letting agent by telephone to pay the rent, she said that she had not been able to find another property, the property is a three bedroomed quarter villa and the Respondent has been the tenant since 2012. She said that the Applicant was aware of the need for refurbishment due to regular inspections.
10. The Tribunal were not satisfied that enough information had been put forward for them to decide on reasonableness. Nothing had been said about what efforts the Applicant had made to address the deterioration of the property over the term of the tenancy. The information given about the Respondent and her circumstances was vague. The Tribunal wished to hear evidence from witnesses regarding reasonableness.

Procedure Subsequent to CMD

11. On 14th June 2024 the Applicant's agent lodged a brief statement confirming that the Respondent lived alone in the three bedroomed property, that the property required a new kitchen, bathroom, flooring and painting throughout, and that the Applicant wished to exit the rental market due to recent legislative changes and interest rate rises.

Hearing

12. The Case Management Discussion ("CMD") took place by teleconference. The Applicant was represented by Miss McKenna of the letting agent, Martin & Co. Mr Ahmed, a Director of the Applicant, was also on the call. There was no attendance by the Respondent, nor by any representative on her behalf.
13. The Tribunal asked for an update in relation to the Respondent's position. Miss McKenna said that the respondent had called on 19th August 2024 to make her rent payment and had said that she had been allocated a property in Alva. She was having difficulty moving her heavy furniture but would be back in touch as soon as she had done so.
14. The Tribunal asked for some clarity regarding whether the Respondent was known to have any disabilities and if the property had been adapted in any way. Miss McKenna replied in the negative.

Findings in Fact

- i. The parties entered into a Short Assured Tenancy Agreement in respect of the property;
- ii. The tenancy ran from from 12th November 2012 to 12th May 2013 and monthly thereafter, and with monthly rent of £400
- 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 9th February 2024;
- v. The Respondent lives alone in the property, which has three bedrooms;
- vi. The Respondent has no known health conditions;
- vii. The property requires a new kitchen, bathroom, flooring and requires painting;
- viii. The Respondent has not attended either the CMD or Hearing, and has made no representations.

Reasons For Decision

15. 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”.

16. The Tribunal now has to decide if it is reasonable to grant the eviction order and has to exercise its discretion in applying the facts to decide if it is reasonable to grant the order. The Tribunal considers that it is reasonable to grant the order based on the information that the Respondent has obtained new accommodation, the Respondent has not responded to the application, and has not attended either the CMD or the Hearing to voice any objection to the order being 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.

Alison Kelly

29th August 2024

Legal Member/Chair

Date