



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/24/0845

Re: Property at 40 Castlehill, Bo'ness, EH51 0HL (“the Property”)

Parties:

Jane Mullan, 8 Tontine Place, Rutherglen, G73 5HE and Helen Bishop, Ealasaid, Mansionhouse Road, Camelon, FK1 4PS as executors nominate of the late Thomas Bishop, formerly residing at Ealasaid, Mansionhouse Road, Camelon, FK1 4PS (“the Applicants”)

Louise Ann Thompson, 40 Castlehill, Bo'ness, EH51 0HL (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

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

Background

1. This is an application by the Applicants for an order for possession on termination of a short assured tenancy in terms of rule 66 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The tenancy in question was a Short Assured Tenancy of the Property by the late Thomas Bishop to the Respondent commencing on 2 March 2015.
2. The copy application was lodged on behalf of Thomas Bishop and dated 20 February 2024 and lodged with the Tribunal on that date. Prior to the case management discussion (“CMD”) we were informed by his agent that he had passed away and information was provided for consideration in advance of the CMD and at the CMD in regard to a motion to amend the applicants to the current Applicants as his executors nominate.

3. The application relied upon a Notice to Quit and notice in terms of section 33 of the Housing (Scotland) Act 1988, dated 16 November and 15 November 2023 respectively. These provided the Respondent with notice (respectively) that the Applicant sought to terminate the Short Assured Tenancy and have the Respondent vacate, each by 2 February 2024. Evidence of service of the said notices by Sheriff Officer service on 20 November 2023 was included with the application.
4. Evidence of a section 11 notice dated 2 February 2024 in terms of the Homelessness Etc. (Scotland) Act 2003 served upon City of Edinburgh Council was provided with the application. In considering the papers, the Tribunal Members noted that the Property was within the local authority area of Falkirk Council and correspondence was sent to the Applicants' agent to seek further submissions. Submissions were made on this at the CMD.

The Hearing

5. On 11 June 2024 at 14:00, at a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting remotely by telephone conference call, we were addressed by the Applicant's agent, Emma Hamilton, paralegal, Clarity Simplicity Solicitors, and by the Respondent herself. One of the Applicants, Jane Mullan, was also in attendance and provided some of the submissions and instructions to her agent.
6. We noted a number of preliminary points to address with the Applicants' agent:
 - a. In regard to the passing of Mr Bishop, we were addressed on a motion to amend the application to be in the name of his executors. We were informed that his date of death was 10 May 2024, and that a copy of the Will appointing the two executors had been sent to the Tribunal. (We obtained a copy by email after the CMD.) Progress towards Confirmation was in the hands of the executors' solicitor but was not yet obtained. The Respondent had no objection to the amendment of the party and we were satisfied to grant the amendment in consideration of Rules 31 and 32.
 - b. An updated rent statement was provided by the Applicants' agent prior to the CMD. It showed arrears as at 23 May 2024 of £8,080. This date did not coincide with any date in the Tenancy Agreement however. The Respondent confirmed that she accepted that the arrears were now £8,080 and explained that she normally paid her rent in advance on the 23rd of each month, so she accepted that the arrears were £8,080 for rent due to 1 July 2024. The Applicants' agent confirmed that she agreed with this reading of the rent statement. We were satisfied to consider the updated rent statement.
 - c. The Applicants' agent provided oral submissions that a section 11 Notice to Falkirk Council had been issued on 30 May 2024 and on 5 June 2024 it had been acknowledged by the council. The council had said on that date that they had provided advice to the Respondent. The Respondent confirmed that she had very recently received a letter from the council on

sources of assistance on housing but she had already been in contact with the council from July 2023. The Respondent confirmed she took no issue with the manner in which the section 11 notice had been belatedly addressed by the Applicants.

7. We sought clarification from the Applicants' solicitor as to whether the application was insisted upon and from the Respondent as to whether the application was opposed. The Applicants' agent confirmed that the eviction was still sought. The deceased had, in consideration of mounting arrears, wished to repossess and sell so as to simplify his affairs subsequent to his medical conditions and prognosis. As the arrears had increased, and the executors did not wish to be landlords, the desire to repossess remained and there was the additional need to sell so as to realise the deceased's estate. (There was a conjoined application on arrears (CV/24/0847).)
8. The Respondent confirmed that she did not object to the eviction. She spoke passionately and emotionally about her connection to the Property, but also said that she had long since wished to leave the Property so as to facilitate the deceased's his wish to sell. She had been most frustrated with Falkirk Council's failure to rehouse her and she believed they would consider it only when she had an eviction order against her. We confirmed with the Respondent that she understood that if an eviction order was issued, she may be at threat of eviction prior to a suitable offer of rehousing. She confirmed to us during the CMD that she understood the position but still did not oppose the eviction order, though was concerned about the speed with which she may need to move, given that she had two children and had a disability. After discussion, she confirmed that she wished six weeks to move out, so sought a suspension of any award of eviction.
9. The Applicants' agent sought Ms Mullan's views on a suspension, and it was confirmed that the Applicants were satisfied to any award being suspended for six weeks.
10. In regard to the details and merits of the application, further information was provided as follows:
 - a. The Property is a three-bedroom mid terrace.
 - b. The Respondent resides there with her two children (10 and 12) and her partner.
 - c. The Respondent is on long-term disability benefits.
 - d. The Respondent's partner had been self-employed but his business had failed and he was now a long-term carer for the Respondent.
 - e. The Respondent's children were both in full time education locally, with both currently at a primary school 4 minutes' walk away. The elder was about to start high school and was affected by uncertainty as to which school that may be, if the family had to leave the area.
 - f. The arrears had developed due to "extreme hardship", associated with the failure of her partner's business. Both she and her partner had incurred debt, and she found herself having to prioritise essential spending, such as food, over rent. She had also had to borrow from family members and was still doing so.

- g. The Property had a wet room, with grab rails, so was partly adapted to be suitable to her disability.
- h. The Property was both close to the primary school and 5 minutes from the Respondent's GP practice.

The Applicants' agent confirmed none of these details were disputed.

- 11. In consideration of the Respondent's consent to the order, the Respondent had no contrary submissions on the grounds for eviction and specifically confirmed no point was taken in regard to any of the notices.
- 12. No order for expenses was sought.

Findings in Fact

- 13. By written lease dated 17 February 2015, the late Thomas Bishop ("the deceased") let the Property to the Respondent by lease with a start date of 2 March to 2 September 2015 which would "continue thereafter on a monthly basis" ("the Tenancy").
- 14. The Tenancy was a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988 further to the deceased issuing the Respondent with a notice under section 32 of the 1988 Act (an "AT5") on 17 February 2015, prior to commencement of the Tenancy.
- 15. On 16 November 2023, the deceased's agent drafted a Notice to Quit in correct form addressed to the Respondent, giving the Respondent notice that the deceased wished her to quit the Property by 2 February 2024.
- 16. On 15 November 2023, the deceased's agent drafted a Section 33 Notice under the 1988 Act addressed to the Respondent, giving the Respondent notice that the deceased required possession of the Property by 2 February 2024.
- 17. 2 February 2024 is an ish date of the Tenancy.
- 18. On 20 November 2023, a Sheriff Officer acting for the deceased's agent competently served each of the notices upon the Respondent. The Respondent was thus provided with sufficient notice of the deceased's intention that the Tenancy was to terminate on 2 February 2024.
- 19. On or around 20 February 2024, the notice period under the notices having expired, the deceased raised proceedings for an order for possession with the Tribunal, under rule 66, the grounds of which being: that the Tenancy had reached its ish; that tacit relocation was not operating; that no further contractual tenancy was in existence; that notice had been provided that the Applicant required possession of the Property all in terms of section 33 of the 1988 Act; and that it was reasonable to make the order.
- 20. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Falkirk Council on or around 30 May 2024 on the Applicants' behalf.

21. On 9 May 2024, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondent, providing the Respondent with sufficient notice of the CMD of 11 June 2024.
22. The Applicants seek to sell the Property as part of a realisation of the assets of the deceased.
23. The Applicants do not wish to act as landlords.
24. The Respondent is in substantial rent arrears.
25. The Respondent lives in the Property with her partner and two children, both of whom are in full-time education in a local school.
26. The Respondent has been seeking rehousing from Falkirk Council but has not yet been rehoused.

Reasons for Decision

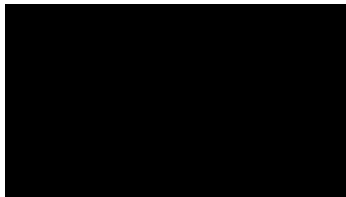
27. The application was in terms of rule 66, being an order for possession upon termination of a short assured tenancy. We were satisfied on the basis of the application and supporting papers that the necessary notices had been served with sufficient notice, the Respondent was extending no defence or dispute to the notices, and thus the requirements of the 1988 Act had been complied with.
28. In regard to the section 11 Notice, it appeared to be a simple administrative error that the wrong local authority was written to at the outset, and there had now been a belated notice to the correct authority. Further, the purpose of the notice is to ensure that the tenant seeks housing support, and the Respondent confirmed that she had been in contact with the local authority since July 2023 and that she took no issue with the compliance with the homelessness legislation. We were satisfied that requirements were adequately complied with.
29. We require, in terms of the 1988 Act as currently amended, to consider “that it is reasonable to make an order for possession”. On this, the Respondent offered no opposition and indeed consented to the order, subject to seeking a short suspension (which the Applicants consented to). Notwithstanding the Respondent’s compelling family and health situation, she wished to leave so as to honour the deceased’s and Applicants’ wishes. We were thus satisfied that the Applicants’ reasons for seeking eviction were reasonable and it was reasonable to evict. In the circumstances before us, and particularly considering the Respondent’s position, we were thus satisfied that it was reasonable to grant the application with a six week suspension.
30. The Rules allow at rule 17(4) for a decision to be made at a CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time but with the earliest date of eviction suspended until 23 July 2024.

Decision

31. In all the circumstances, we make the decision to grant an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988 suspended as stated above.

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.



11 June 2024

Legal Member/Chair

Date