



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/24/1255

Re: Property at Flat D, 109 Cockels Loan, Renfrew, PA4 0NJ (“the Property”)

Parties:

James Stuart McAuslane, 196 Wedderlea Drive, Glasgow, G52 2TA (“the Applicant”)

Karen Nelson, Flat D, 109 Cockels Loan, Renfrew, PA4 0NJ (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

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

1. This is an application by the Applicant 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 Applicant to the Respondent commencing on 14 October 2013. The application was dated 15 March 2024 and lodged with the Tribunal on that date.
2. The application relied upon a Notice to Quit and notice in terms of section 33 of the *Housing (Scotland) Act 1988*, both dated 9 January 2024, providing the Respondent with notice (respectively) that the Applicant sought to terminate the Short Assured Tenancy and have the Respondent vacate, each by 14 March 2024. Evidence of service of the said notices by Sheriff Officer service on 12 January 2024 was included with the application.

3. Evidence of a section 11 notice dated 15 March 2024 of the *Homelessness Etc. (Scotland) Act 2003* served upon Renfrewshire Council was provided with the application.

The Hearing

4. On 13 August 2024 at 14:00, at a case management discussion (“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 letting agent, Robert Nixon of Ritehome Ltd. There was no appearance on behalf of the Respondent.
5. Our clerk confirmed no contact had been made by the Respondent with the Tribunal, and the Applicant’s agent stated that there had been no material contact with his office. He confirmed the following contact since service of the Notices:
 - a. After service of the Notice to Quit and Section 33 Notice, prior to lodging of the application, the Respondent made contact with his office to say that she had sought to be housed by North Lanarkshire Council but had not yet received housing. She said she would move out when rehoused.
 - b. His office’s property manager had recently visited the Property to see if the Respondent remained in occupation. She answered the door, and the property manager reminded her of today’s CMD, but no other discussion took place about the application or moving out.

In the circumstances, and in consideration that we had not commenced the CMD call until after 10:05, we were satisfied to proceed without the Respondent’s appearance. In any case, she did not call in - and nor did anyone on her behalf - during the CMD.

6. The Applicant’s agent confirmed that the application was still insisted upon and explained that the Applicant sought vacant possession so that his grandson could occupy the Property. The Applicant’s agent provided the following additional information:
 - a. The Property is a one-bedroom flat.
 - b. The Respondent is believed to live at the Property alone.
 - c. The Property is not known to be adapted for the Respondent’s needs, nor especially suitable (due to its nature or location) for her use.
 - d. The Respondent is not in arrears and there has been no adverse conduct by her in terms of the Tenancy Agreement.

7. No order for expenses was sought.

Findings in Fact

8. By written lease dated 14 October 2013, the Applicant let the Property to the Respondent by lease with a start date of 14 October 2013 until 14 April 2014 to the “continue on a monthly basis until terminated by either party” (“the Tenancy”).

9. The Tenancy was a Short Assured Tenancy in terms of the *Housing (Scotland) Act 1988* further to the Applicant issuing the Respondent with a notice under section 32 of the 1988 Act (an "AT5") on 14 October 2013, prior to commencement of the Tenancy.
10. On 9 January 2024, the Applicant's agent drafted a Notice to Quit in correct form addressed to the Respondent, giving the Respondent notice that the Applicant wished her to quit the Property by 14 March 2024.
11. On 9 January 2024, the Applicant drafted a Section 33 Notice under the 1988 Act addressed to the Respondent, giving the Respondent notice that the Applicant required possession of the Property by 14 March 2024.
12. 14 March 2024 is an ish date of the Tenancy.
13. On 12 January 2024, a Sheriff Officer acting for the Applicant competently served each of the notices upon the Respondent. The Respondent was thus provided with sufficient notice of the Applicant's intention that the Tenancy was to terminate on 14 March 2024.
14. On 15 March 2024, the notice period under the notices having expired, the Applicant 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.
15. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon Renfrewshire Council on 15 March 2024 by the Applicant.
16. On 8 July 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 13 August 2024.
17. The Applicant seeks to provide his grandson with accommodation and regards the Property as a suitable home for his grandson. The Applicant seeks vacant possession so as to provide possession of the Property to his grandson.

Reasons for Decision

18. 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. In any case, the Respondent has extended no defence or dispute to the notices. We were satisfied that the requirements of the 1988 Act had been complied with.

19. We require, in terms of the 1988 Act as currently amended, to consider “that it is reasonable to make an order for possession”. In regard to reasonableness generally, we were satisfied that the Applicant’s reason for seeking eviction was reasonable in that he sought to provide his grandson with accommodation. On this, the Respondent had offered no opposition and provided no contrary argument on reasonableness during the course of the application.
20. 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 consider the order at this time. In all the circumstances before us, and particularly considering the lack of any contrary position put forward by or on behalf of the Respondent, we were thus satisfied that it was reasonable to grant the application in normal terms.

Decision

21. 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.

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.

J. Conn

13 August 2024

Legal Member/Chair

Date