



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 Housing (Scotland) Act 1988 (“the 1988 Act”)

Chamber Ref: FTS/HPC/EV/24/2287

Property at FLAT 2/2, 70 STOCK STREET, PAISLEY, PA2 6NJ (“the Property”)

Parties:

Mr Lee Pierce-Jones, 7 BANKSIDE BOULEVARD, APARTMENT 4401, SALFORD, M3 7HP (“the Applicant”)

Mr Jaroslaw Pelczynski, FLAT 2/2, 70 STOCK STREET, PAISLEY, PA2 6NJ (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and David MacIver (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondent in favour of the Applicant.

Background

- 1. The Applicant seeks an order for possession in terms of Section 33 of the 1988 Act. A tenancy agreement, AT5 Notice, Notice to Quit, Section 33 Notice, Sheriff Officer certificate of service and Section 11 Notice were lodged with the application.**
- 2. A copy of the application was served on the Respondent by Sheriff Officer. Both parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 17 October 2024 at 10am and that they were required to participate.**
- 3. The CMD took place on 17 October 2024. The Applicant participated. The Respondent did not participate and was not represented. He did not contact the Tribunal in advance of the CMD.**

The Case Management Discussion

4. Mr Pierce Jones told the Tribunal that the Respondent is still in occupation of the property. He was in contact with him in September, trying to arrange access for a boiler repair. However, the Respondent said that he was away and could not provide access. The Applicant said that the property had been managed by a letting agent at the start of the tenancy and he has never had any direct contact with the Respondent, except by phone. He frequently does not respond to calls and messages. Mr Pierce Jones said he thinks that the Respondent lives at the property alone and has a haulage business which he runs from the property. Access for inspection and repair is often difficult and the rent is often late, although there are no arrears at present. The plan is to sell the property. He had five properties at one point and has already sold three. He is selling them all. Currently the rent does not cover the mortgage and other costs, and his mortgage is due to expire in a couple of years, so he wants to sell before he has to re-mortgage. A selling agent has already been instructed. The Respondent hand delivered a letter to the selling agent which listed repair issues at the property and offered to purchase it for £50000 to £60000. However, this is much less than the market value assessed by the agent. Mr Pierce Jones is also concerned about the offer being made for cash without going through the proper conveyancing process. The Respondent also offered to increase the rent and pay a year in advance, but Mr Pierce Jones wants to sell the property. He is also concerned that the Respondent is unreliable and not easy to deal with as a tenant.

Findings in Fact

5. The Applicant is the owner and landlord of the property.
6. The Respondent is the tenant of the property in terms of a short assured tenancy agreement.
7. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondents on 15 March 2024.
8. The Respondent resides at the property alone. He operates a business from the property.
9. The Applicant wishes to recover possession of the property in order to sell it.
10. The rental income does not cover the Applicants monthly costs in relation to the property.
11. The Respondent often fails to provide access to the property for inspection and repair.

Reasons for Decision

12. The application was submitted with a short assured tenancy agreement and AT5 Notice. The initial term of the tenancy was six months starting on 15 April 2017, with a provision that it would continue on a month to month basis after the initial term.
13. Section 32 of the 1988 Act states “(1) A short assured tenancy is an assured tenancy - (a) which is for a term of not less than 6 months; and (b) in respect of which a notice is served as mentioned in subsection (2) below. (2) The notice referred to in subsection (1)(b) above is on which – (a) is in such form as may be prescribed; (b) is served before the creation of the short assured tenancy; (c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under the tenancy; and (d) states that the assured tenancy to which it relates is to be a short assured tenancy.”
14. The Tribunal is satisfied that the tenancy agreement between the parties was for an initial term of six months and therefore meets the requirements of Section 32(1) of the 1988 Act. The Tribunal is also satisfied that an AT5 Notice was given to the Respondent prior to the creation of the tenancy. In the circumstances, the Tribunal determines that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act.
15. From the documents submitted with the application, and information provided at the CMD, the Tribunal is satisfied that the Applicant served a Notice to Quit and Section 33 Notice on the Respondent on 15 March 2024. The Notice to Quit called upon the Respondent to vacate the property on 15 May 2024, an ish date. The Notice contains the information prescribed by the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and complies with the terms of Section 112 of the Rent (Scotland) Act 1984. The Tribunal is satisfied that the Notice to Quit is valid and that the tenancy contract has been terminated. The Section 33 Notice was also served on 15 March 2024 and gave the Respondent more than 2 months notice that the Landlord wished to recover possession of the property. A Section 11 Notice was submitted with the application, with evidence that it was sent to the Local Authority. The Applicant has therefore complied with Section 19A of the 1988 Act.
16. Section 33 of the 1988 Act, (as amended by the Coronavirus (Recovery and Reform) (Scotland) Act 2022) states “(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied – (a) that the short assured tenancy has reached its finish; (b) that tacit relocation is not operating; (d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and (e) that it is reasonable to make an order for possession” Subsection 2 states “The period of notice to be given under

subsection (1)(d) above shall be – (1) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period; (ii) in any other case, two months”. The Tribunal is satisfied that the tenancy has reached its finish and, as the Applicant has served a valid Notice to Quit, that tacit relocation is not operating. A valid notice in terms of section 33(d) has also been served on the Respondent, giving at least two months’ notice that the Applicant required possession of the property.

17. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession, in terms of Section 33(e) of the 1988 Act.

18. The Tribunal had regard to the following: -

- (a) The Respondent did not attend the CMD or notify the Tribunal that the application is opposed.
- (b) The Respondent resides at the property alone.
- (c) The Applicant is in the process of selling his portfolio and wishes to sell the property.
- (d) The rental income for the property does not currently cover the Applicant’s costs and the mortgage over the property is due to end in two years’ time. The Applicant will have to sell or re-mortgage the property when the mortgage ends.
- (e) The Respondent has been unreliable in relation to rent payments and providing access for essential repairs and maintenance of the property.

19. For the reasons specified, the Tribunal is satisfied that it would be reasonable to grant the application.

20. The Tribunal is satisfied that the Applicant has complied with the provisions of the 1988 Act and that it would be reasonable to grant the order.

Decision

21. The Tribunal determines that an order for possession of the property should be granted against the Respondent.

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.

Josephine Bonnar, Legal Member

17 October 2024

Josephine Bonnar