



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/24/3223

Re: Property at 2 Thrums Gardens, Kirriemuir, DD8 5DU (“the Property”)

Parties:

Miss Emily Simpson, 22 Nicoll Place, Carnoustie, Angus, DD7 6GS (“the Applicant”)

Ms Lisa Simpson, 2 Thrums Gardens, Kirriemuir, DD8 5DU (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be dismissed.

Background

1. A Case Management Discussion (CMD) was held by teleconference on 13 November 2024. The Applicant did not attend but was represented by Mr Tony McTigue from the Applicant’s representatives Jackson Boyd, Solicitors, Glasgow. The Respondent attended in person. Also in attendance as an observer was Ms Jenna Thorpe from the Applicant’s representatives.
2. At the commencement of the CMD the Tribunal queried with the Respondent in light of her email of 1 November if she had a confirmed date for her removal from the property. The Respondent advised the Tribunal that she was trying to arrange a removal van and that was proving difficult but that she would move out of the property by 30 November at the latest. For the Applicant, Mr McTigue confirmed he was still looking for an order for possession given the level of rent arrears and submitted that there would be no prejudice to the Respondent with an order being granted but that there would be prejudice to the Applicant if an

order was not granted and the Respondent did not vacate the property and the rent arrears continued to rise.

3. The Tribunal referred Mr McTigue to the application submitted to the Tribunal dated 15 July 2024 and asked Mr McTigue to confirm that the application had been made under Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“ the Rules”). Mr McTigue confirmed that this was the case. The Tribunal then referred Mr McTigue to the terms of Part 5 of the application and the grounds of possession and Mr McTigue confirmed the Applicant was seeking possession under Grounds 11 and 12 of Schedule 3 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Tribunal explained to Mr McTigue that these grounds were not compatible with an application under Rule 66 which was that the tenancy had reached its ish. The Tribunal noted that this defect ought to have been identified at the sifting stage of the application and that it was unfortunate that it was not and queried with Mr McTigue if he wished to amend the application. Mr McTigue asked the Tribunal for a short adjournment to allow him to take instructions and the Tribunal adjourned for ten minutes.
4. Following the adjournment Mr McTigue advised the Tribunal that there had been an administrative error and the wrong box in the application had been ticked. The Tribunal asked Mr McTigue if he wished to amend the application. Mr McTigue said that he did not and that in terms of Rule 2 of the 2017 Rules the overriding objective of the Tribunal was to deal with the proceedings justly and that meant seeking informality and flexibility in the proceedings. Mr McTigue submitted that there would be no material prejudice to the Respondent if the Tribunal granted an order for possession under grounds 11 and 12 given the level of rent arrears and given the correct notices had been served on the Respondent. But there would be prejudice to the Applicant if the Respondent remained in the property and the arrears continued to rise.
5. The Tribunal again explained to Mr McTigue that the application had been raised under Rule 66 not Rule 65 and therefore the Tribunal could not grant an order under Section 18(1) of the 1988 Act and again asked Mr McTigue if he wished to amend the application. Mr McTigue said that he did not.
6. The Tribunal explained to Mr McTigue once again the difficulty that the Applicant had with the application in its current form and explained that if the application was dismissed the Applicant would have to commence proceedings again. The Tribunal then asked Mr McTigue for one final time if he wished to amend the application but he again said he did not.

Reasons for Decision

7. The Applicant’s representatives made an application for possession of the property under Rule 66 of the Rules. This rule is in respect of an application for possession of a property under Section 33 of the 1988 Act on termination of a short assured tenancy. The Applicant’s representatives had served a Section 33 Notice and Notice to Quit on the Respondent but had in part 5 of the

application stated that the grounds of possession were Grounds 11 and 12 of Schedule 3 of the 1988 Act. These grounds for possession were not compatible with an application under rule 66. The application was invalid in its current form. The Tribunal considered it unfortunate that the defect had not been noticed at the sifting stage and gave the Applicant's representative an opportunity to ask for permission to amend the application. The Application could have been amended quite easily by asking to allow the application to proceed under rule 65 instead of Rule 66 or by asking to substitute as the grounds that the tenancy had reached its end. Unfortunately for reasons best known to himself, Mr McTigue repeatedly refused to ask the Tribunal to allow the application to be amended.

8. Although the Tribunal was in full agreement with Mr McTigue that the Tribunal's overriding objective was to deal with the proceedings justly and in a manner which is proportionate to the complexity of the issues and the resources of the parties and by seeking informality and flexibility, it could not grant an order under Section 18(1) of the 1988 Act on an application raised under Section 33. The Tribunal went to considerable lengths to give Mr McTigue every opportunity to reconsider the position he was taking but ultimately the Tribunal concluded that the application was invalid and in the absence of an application to amend, the Tribunal could not deal with the application justly and fairly and the application should be dismissed.

Decision

9. The application is dismissed.

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.

Graham Harding

**Graham Harding
Legal Member/Chair**

**13 November 2024
Date**

