



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/EV/24/1569

Re: Property at 48A Lady Helen Street, Kirkcaldy, KY1 1PP (“the Property”)

Parties:

Mr Derek Rae and Mr David Peters, 14A Goosegate, Nottingham, NG1 1FE (“the Applicants”)

Mr Bruce David Philips and Mrs Linda Jane Philips, 48A Lady Helen Street, Kirkcaldy, KY1 1PP (“the Respondents”)

Tribunal Members:

Shirley Evans (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondents for possession of the Property at 48A Lady Helen Street, Kirkcaldy, KY1 1PP under Section 33 of the Housing (Scotland) Act 1988 be granted. The order will be issued to the Applicants after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents. The order will include a power to Officers of Court to eject the Respondents and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicants or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

1. This is an action for recovery of possession of the Property raised in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
2. The application was accompanied by a copy of a tenancy agreement dated 13 September 2009 between the Applicants and the Respondents, a Notice

to Quit and Section 33 Notice dated 19 September 2023, a Royal Mail Track and Trace receipt dated 22 September 2023, and a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 to Fife Council with an email dated 4 April 2024.

3. The Tribunal requested the Applicants' solicitors McKenzie's provide a copy of the AT5. In response they explained that so far as their client is aware the AT5 would have been served at the point of entering into the tenancy and referred the Tribunal to Clause 8 of the Schedule to the offer of let. The Tribunal noted that Clause 8 provided that the Respondents by entering into the tenancy accepted they had received Notice in terms of Section 32 of the Housing (Scotland) Act 1988. They further advised that they did not act for the Applicants at that time, but had contacted the firm who did, Andrew K Price, Solicitors, who had advised they no longer hold any records, due to the passage of time.
4. On 27 June 2024, the Tribunal accepted the application under Rule 9 of the Regulations.
5. On 1 October 2024, the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 8 November 2024. The Respondents required to lodge written submissions by 22 October 2024.
6. On 14 October 2024 the Respondents' representative Magdalena Johnston from Frontline Fife lodged representations to the effect that the Respondents did not oppose the application, were vulnerable and were seeking appropriate assistance from Fife Council.

Case Management Discussion

7. The Tribunal proceeded with the CMD on 8 November 2024 by way of teleconference. Ms Brown from McKenzie's solicitors appeared for the Applicants. Ms Johnston from Frontline Fife appeared for the Respondents.
8. The Tribunal had before it the tenancy agreement dated 13 September 2009 between the Applicants and the Respondents, the Notice to Quit and Section 33 Notice dated 19 September 2023, the Royal Mail Track and Trace receipt dated 22 September 2023, the Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 to Fife Council with an email dated 4 April 2024. The Tribunal considered the terms of these documents.
9. The Tribunal explained it had had an opportunity of considering the Application and the submissions relating to the AT5 and was satisfied that the necessary legal requirements had been met. It also explained that it understood the application was not opposed. However, the Tribunal had to be satisfied it was reasonable to evict.

10. Ms Brown submitted that the mortgage on the Property was unaffordable as the Applicants were paying £300 per month more towards the mortgage than they were receiving in rent. They had been liaising with their lender who had given the Applicants some time to sort their financial position out although there was now the possibility they would move to repossess the Property. On being questioned by the Tribunal she advised that the Applicants owned no other properties except for their own home and that the situation was simply that that it was no longer affordable for them.
11. On behalf of the Respondents Ms Johnstone confirmed the application was not opposed. She explained that the Housing Officer at Fife Council was very invested in helping the Respondents. The Respondents had mental health issues and autism and the whole process was making them extremely anxious. She was in constant contact with them to support them.
12. The Tribunal asked Ms Brown whether in the circumstances the postponement of any Order until after the new year would be problematic. She advised she hoped not and would hope the lenders would be understanding. Ms Johnstone advised she had no instructions regarding a postponement. They wanted to move forward but was not sure about how quickly Fife Council would be able to find alternative accommodation.

Findings in Fact

13. The parties entered into a Short Assured Tenancy Agreement dated 13 September 2009. In terms of Clause 2 of the Short Assured Tenancy Agreement the tenancy commenced on 16 September 2009 and ended on 16 March 2010.
14. In terms of Clause 8 of the Schedule to the tenancy agreement the Respondents accepted that by entering into the tenancy they had received a notice in terms of Section 32 of the Housing (Scotland) Act 1988.
15. The Applicants served a Notice to Quit and Notice in terms of Section 33 of the Housing (Scotland) Act 1988 both dated 19 September 2023. These were served on the Respondents by recorded delivery post on 20 September 2023. These were received by the Respondents on 22 September 2023. The Notice to Quit and the Section 33 Notice expired on 16 March 2024.
16. The Short Assured Tenancy reached its end as at 16 March 2024.
17. *Tacit relocation* is not operating. The contractual Short Assured Tenancy had been brought to an end by the Notice to Quit on 16 March 2024.
18. The Applicants pay £300 per month more towards their mortgage than they receive in rent. It is no longer affordable for them.

19. The Respondents have mental health issues and are seeking help from Frontline Fife and Fife Council to support them.
20. The Applicants served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on Fife Council on 5 April 2024.

Reasons for Decision

21. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the oral submissions made by both parties at the CMD. The Tribunal concluded that the Applicants were entitled to seek repossession of the Property under Section 33 of the Housing (Scotland) Act 1988. There was a properly constituted Short Assured Tenancy with the Respondents. The Tribunal was satisfied that the statutory provisions of Section 33 of the Housing (Scotland) Act 1988 had been met namely that the Short Assured Tenancy had reached its term (termination date); the Notice to Quit brought the contractual Short Assured Tenancy to an end, and that the Applicants had given the Respondents notice in terms of Section 33(1)(d) of the Housing (Scotland) Act 1988 stating that possession of the property was required by 16 March 2024.
22. The terms of Section 33 of the Housing (Scotland) Act 1988 would normally entitle the Applicants to a right of mandatory repossession of the Property. In terms of Schedule 1, paragraph 3 (4) of the Coronavirus (Scotland) Act 2020 the Applicants also has to satisfy the Tribunal that it is reasonable to evict.
23. In determining whether it is reasonable to grant the order the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal gave weight that the Applicants found themselves in a position where they were paying £300 per month towards their mortgage than they were receiving in rent. The Tribunal also considered that the Respondents were vulnerable and found the process challenging and wanted to move on. The Tribunal considered the stress and anxiety that both parties were under and gave some weight to the fact that an Order would give the Respondents a some clarity that they had to move out. The Tribunal considered that the Respondents had taken advice from Fife Council. The balance of reasonableness in this case weighted towards the Applicants. The Tribunal find it would be reasonable to grant the order.
24. In the circumstances the Tribunal considered that in terms of Section 33 of the Housing (Scotland) Act 1988 as amended it was reasonable to grant an eviction order. Due to the Respondents' vulnerabilities and the fact that Fife Council may need further time to assist the Respondents to find suitable alternative accommodation the Tribunal suspended the Order

Decision

25. The Tribunal granted an Order for repossession suspended until 13 January 2025. The decision of the Tribunal was unanimous.

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.

S Evans

08 November 2024

Legal Member

Date