



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 and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules)

Chamber Ref: FTS/HPC/EV/24/2921

Re: Property at 104 West End Drive, Bellshill, ML4 3BE (“the Property”)

Parties:

Mr Alan Livingstone, 100, Muirhouse Tower, Motherwell, ML1 2HH (“the Applicant”)

Ms Samantha Carnegie, 104 West End Drive, Bellshill, ML4 3BE (“the Respondent”)

Tribunal Members:

Andrew Cowan (Legal Member) and Mike Scott (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory requirements for eviction and recovery of possession have been established and that it is reasonable to grant the order sought.

Background

1. By application dated 26 June 2024, the Applicant sought an order under section 33 of the Housing (Scotland) Act 1988 (“the Act”) and in terms of rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

2. On 19th July 2024 the application was accepted by the tribunal and referred for determination by the tribunal.
3. A Case Management Discussion was arranged to take place on 25th November 2024 and appropriate intimation of that hearing was given to both parties.

The Case Management Discussion

4. The Case Management Discussion (CMD) took place on 25th November 2024. The Applicant was personally present and was represented by Mr Thomas Gallagher of Ness Gallagher solicitors.
5. The Respondent did not join the CMD call. The Tribunal were satisfied that the Application, and details of the CMD, had been intimated upon the Respondent by Sheriff Officers on 18th October 2024. The Respondent has not made any written representations to the Tribunal in advance of the CMD. The Tribunal was satisfied that the Respondent had been given reasonable notice of the date, time and place of the CMD and that the requirements of rule 24(1) of the First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Procedure Rules”) had been duly complied with. In the circumstances the Tribunal proceeded with the application in accordance with rule 29 of those Procedure Rules.

Discussions at CMD

6. The Applicant’s solicitor explained to the Tribunal that the Applicant wished to seek recovery of the Property as he wished to move into the Property as his own main residence. It was explained to the Tribunal that the Applicant become homeless in May 2024. At that time the Applicant had secured temporary homeless accommodation through North Lanarkshire Council. A copy of an agreement to occupy temporary accommodation between the Applicant and North Lanarkshire Council, dated 3rd May 2024, had been exhibited to the Tribunal.
7. The Applicant confirmed that he had been in recent contact with the Respondent. He confirmed that the Respondent lived in the Property with her two children. The Applicant had been advised by the Respondent that she had applied to the local authority for alternative accommodation, but that she had been advised by the local authority that they could not progress an offer of alternative accommodation until an eviction order for repossession was

granted this Tribunal. The Applicant confirmed that the Respondent was ready to vacate the Property as soon as alternative accommodation was made available by the local authority.

Findings in Fact

8. The Applicant and the Respondent, as respectively the landlord and the tenant, entered into a tenancy of the property by an agreement dated 25th June 2017.

9. The tenancy was a short assured tenancy in terms of the Act

10. On 24th April 2024, the Applicant served upon the tenant a notice to quit and a notice in terms of section 33 (1) (d) of the Act. These notices were served on the respondent by recorded delivery post. Said notices became effective on 25th June 2024.

11. The notices informed the tenant that the landlord wished to seek recovery of possession using the provisions of section 33 of the Act.

12. The notices were correctly drafted and gave appropriate periods of notice as required by law.

13. The basis for the order for possession was accordingly established.

Decision and reasons

14. An eviction order on this basis can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order

15. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties

16. In this case the tribunal finds that it is reasonable to grant the order.
17. The landlord has indicated a desire to recover possession of the Property to allow him to move into the Property for his own needs.
18. In reaching a decision on whether it was reasonable to grant the order sought the Tribunal took account of the fact that the Respondents, despite being given an opportunity to submit written representations to the Tribunal and to attend the CMD, had chosen to do neither. The Tribunal also took account of the fact that the Respondents had advised the Applicant that she was willing to vacate the Property when she has been offered suitable alternative accommodation by the local authority.
19. The Tribunal note that when the tenancy agreement commenced the Applicant had an absolute right to terminate the tenancy having given appropriate statutory notice.
20. The Tribunal have determined that, having considered all of the relevant circumstances, the balance of reasonableness in this case weighs towards the Applicant.
21. The Tribunal also exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD

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.

Andrew Cowan

25th November 2024

Legal Member/Chair

Date

