



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/24/2243

Re: Property at 24 DENNY ROAD, DUMBARTON, G82 1JL (“the Property”)

Parties:

MS ROSEMARY CLIFT, EILDON, DRYMEN ROAD, BALLOCH (“the Applicant”)

MS Caroline Calderwood, Mr Steven Gibson, 24 DENNY ROAD, DUMBARTON, G82 1JL (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order, with execution of said order suspended for a period of two months from the date of this decision

Background

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the property. In support of the application the Applicant provided the following documentation:-
 - (i) Form AT5 with signed acknowledgement from both Respondents;
 - (ii) Notice to Quit, Form AT6 and Notice under section 33 of the Housing (Scotland) Act 1988 dated 18 October 2023 together with proof of service by Sheriff Officers on 19 October 2023;
 - (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to West Dunbartonshire Council together with proof of service by email;

- (iv) Tenant information pack;
 - (v) Bank statements;
 - (vi) Copy letter to the Respondent in compliance with the rent arrears pre-action protocol;
 - (vii) Copy response from the Respondent to the aforementioned letter.
- 2 By Notice of Acceptance of Application a Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. The application was therefore referred to a Case Management Discussion (“CMD”) on 19 November 2024 to take place by teleconference. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers in accordance with Rule 17(2) of the Rules of Procedure. Both parties were invited to make written representations in advance of the Case Management Discussion.
- 3 On 1 November 2024 the Tribunal received written representations from Caroline Calderwood. In summary Ms Calderwood outlined a chronology of issues with disrepair at the property as well as her communications with the Applicant. The Respondent disputed that Stephen Gibson was a joint tenant. She advised that she had been waiting to leave the property since March 2023 and had no objection to an eviction order. She no longer wished to stay in the property as it was affecting her health, stating that she had a heart condition and underlying asthma.
- 4 On 19 November 2024, prior to the CMD, the Applicant’s representative emailed the Tribunal with a letter that had been sent to Ms Calderwood on 14 November 2024 acknowledging her written representations and requesting clarification on the issues of disrepair so that the Applicant could arrange an inspection in order to consider what repairs may be necessary.

Case Management Discussion

- 5 The CMD took place on 19 November 2024 by teleconference. The Applicant attended and was represented by Mr John McKeown, Solicitor. Ms Calderwood was also present.
- 6 The Tribunal explained the purpose of the Case Management Discussion and the legal test and asked for the submissions on behalf of both parties. For the avoidance of doubt the following is a summary of the submissions made and does not constitute a verbatim account of the discussion, only those matters relevant to the Tribunal’s determination of the application.

- 7 Mr McKeown confirmed that the Applicant sought an eviction order under section 33 and section 18 of the Housing (Scotland) Act 1988. He acknowledged that the tenancy agreement had not been provided with the application. The Applicant believed that she had handed both copies to the Respondent when the agreement was signed. She did not have a copy. However, it was the Applicant's position that the Tribunal could be satisfied that the tenancy in place was a short assured tenancy, and could accept the terms of the agreement in respect of rent and the ish date. Mr McKeown made reference to the tenant information pack that had been submitted which had been provided to the Respondents at the commencement of the tenancy. It confirmed that the tenancy was a short assured tenancy with a period of 12 months. Mr McKeown also referenced the Form AT5 that had been signed by both Respondents on 20th December 2016 which coincided with the date of entry. It was therefore submitted that the term of the tenancy ran for a period of 12 months from 20th December 2016. Thereafter it had continued by tacit relocation on an annual basis. With regard to the rent, Mr McKeown referred to bank statements which reflected a payment of £900 per month from the Respondent.
- 8 Mr McKeown confirmed that the Respondents had been served with a notice to quit and section 33 notice which requested their removal by the 20th December 2023. The notices had expired and the Respondents had remained in the property. The application to the Tribunal was accordingly necessary.
- 9 With regard to the issues raised by Ms Calderwood in her representations Mr McKeown confirmed that the Applicant had taken an active role in trying to resolve these issues, summarising the actions she had taken. He referred to the letter that he had submitted which had been sent Ms Calderwood on 14th November 2024. It was in the Applicant's interest to maintain the property. She had served the section 33 notice as she intended to sell. She did not wish there to be any issues that may affect the value of the property. Mr McKeown confirmed that there were rent arrears outstanding of £16,000. Ms Calderwood had not clarified whether she was withholding rent or whether it was her position that rent was not lawfully due. No rent had been paid since January 2023.
- 10 Mr McKeown submitted that it would be reasonable for an eviction order to be made in this case due to the Applicant's desire to sell the property, and the outstanding rent arrears. With regards to the Applicant's circumstances he advised that she owned three properties, the property that was the subject of this application, another rental property that she inherited from her mother approximately six years ago, and her own home. She relied upon the rental income, which was her only source of income in addition to her pension. The rent arrears were having a substantial impact on the Applicant, having reduced her income by approximately one third. Mr McKeown confirmed however that the Applicant would have no objection to a suspension of the enforcement of the order if the Tribunal were minded to consider this.
- 11 Ms Calderwood confirmed that she did not oppose the granting of an eviction order. She had wanted to leave the property years ago. She had first brought the issues of disrepair to the Applicant's attention in February 2022. The

Applicant had made one attempt to resolve the issue, and then nothing was done until May 2023 when the Applicant was given legal advice to take action. The house suffered from damp and mould. There was water ingress. The oven didn't work and had been broken for a year and a half. It was so cold that her daughter had to sleep with her at night. She confirmed that she had spoken with the council about rehousing when she received the notice to quit. They had told her not to leave until she received an eviction notice. They could not offer her housing until she was homeless. She would have left the property last year if she could and felt the process had dragged on. She had packed up her things two years ago but had to wait for the eviction notice.

- 12 In response to questions from the Tribunal Ms Calderwood confirmed that she had two children, a son aged 17 and a daughter aged 14. Her son had recently finished school and commenced an apprenticeship. She was employed in the sheriff court. She suffered from a heart condition, as well as asthma, and took medication daily. Her son also had asthma which would flare up when he was unwell.
- 13 The Tribunal adjourned the CMD to deliberate, at which point parties left the call. Ms Calderwood did not rejoin the call at the time stated, therefore the decision was confirmed verbally in her absence. Ms Calderwood subsequently spoke with the Tribunal clerk and explained that she had been having technical difficulties. She was advised of the Tribunal's decision on the application.

Relevant Legislation

- 14 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Housing (Scotland) Act 1988:-

“32 Short assured tenancies.

(1)A short assured tenancy is an assured tenancy—

(a)which is for a term of not less than six 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 one which—

(a)is in such form as may be prescribed;

(b)is served before the creation of the 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 that tenancy; and

(d)states that the assured tenancy to which it relates is to be a short assured tenancy.

(3) Subject to subsection (4) below, if, at the finish of a short assured tenancy—

(a) it continues by tacit relocation;

(b)

the continued tenancy... shall be a short assured tenancy, whether or not it fulfils the conditions in paragraphs (a) and (b) of subsection (1) above.

(4) Subsection (3) above does not apply if, before the beginning of the continuation of the tenancy the landlord or, where there are joint landlords, any of them serves written notice in such form as may be prescribed on the tenant that the continued tenancy is not to be a short assured tenancy.

(5) Section 25 above shall apply in relation to a short assured tenancy as if in subsection (1) of that section the reference to an assured tenancy were a reference to a short assured tenancy.

33 Recovery of possession on termination of a short assured tenancy.

(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 end;

(b) that tacit relocation is not operating; and

(c)

(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.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than six months, that period;

(ii) in any other case, six months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.”

Findings in Fact and Law

- 15 The Applicant entered into a Short Assured Tenancy Agreement with the Respondents dated 20 December 2016, the term of which was twelve months from that date. The Respondents were both provided with a Form AT5 prior to the creation of the tenancy.
- 16 The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 17 On 19 October 2023 the Applicant delivered to the Respondents a Notice under section 33 of the Housing (Scotland) Act, stating that the Applicant required the property back by 20 December 2023, and a Notice to Quit which sought to terminate the tenancy as at that date. The Notice to Quit was in the prescribed form. The Notices were served by Sheriff Officers.
- 18 The Notice to Quit terminates the tenancy as at 20 December 2023 which is an ish date under the terms of the tenancy agreement.
- 19 The Applicant requires vacant possession of the property in order to sell the property.
- 20 The Respondent, Caroline Calderwood, resides in the property with a son aged 17 and a daughter aged 14.
- 21 The Respondent, Caroline Calderwood, has a heart condition and underlying asthma.
- 22 The Respondent, Caroline Calderwood, does not wish to remain in the property.
- 23 The Respondent, Caroline Calderwood, has made an application for housing to West Dunbartonshire Council. The making of an eviction order will prioritise the Respondent's application.

Reasons for Decision

- 24 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved. Both parties were in agreement that an eviction order should be made in this case.

- 25 The Tribunal was satisfied based on the application paperwork and the submissions from Mr McKeown that the tenancy in place between the parties was a short assured tenancy. Whilst the Applicant had been unable to produce a copy of the tenancy agreement, Ms Calderwood had not sought to dispute this fact, only objecting to the inclusion of Mr Gibson as a joint Respondent. The Tribunal was however satisfied that it could reasonably conclude on the balance of probabilities, and based on the Form AT5 that Mr Gibson had signed when the tenancy was created, that he had been a joint tenant. The Tribunal therefore considered that he should be named as a joint Respondent in order to protect the Applicant's position, and that there would be no prejudice to him in doing so if he were no longer residing at the property.
- 26 The Tribunal was also satisfied that the Respondents had been served with a Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988, terminating the tenancy as at the ish date of 20 December 2024. The issue for the Tribunal to determine therefore was whether it was reasonable in all the circumstances of this case to grant an eviction order.
- 27 The Tribunal noted that there appeared to be a dispute between the parties regarding the rent arrears. The Tribunal therefore concluded that it was unable to make any findings as to the exact amount of arrears that were outstanding, and the allegations of disrepair, without further evidence.
- 28 It was clear however that Ms Calderwood was intent on leaving the property, and was awaiting the outcome of the Tribunal proceedings in order to progress her application for housing with the council. This was a relevant factor in terms of reasonableness to which the Tribunal applied significant weight. The Tribunal was aware that the council would have a statutory obligation to offer assistance to Ms Calderwood in this regard. This allayed any concerns the Tribunal had about the impact of an eviction order on Ms Calderwood and her two children.
- 29 The Tribunal also gave significant weight to the Applicant's reason for terminating the tenancy, namely her intention to sell. The Respondent had not challenged this and the Tribunal found it a credible explanation for the action she had taken.
- 30 Accordingly, having taking those factors relevant to the assessment of reasonableness into account the Tribunal concluded that the balance weighed in favour of making an eviction order and the provisions of section 33 of the 1988 Act had been met. However in view of the upcoming festive period, and in order to give Ms Calderwood sufficient time to obtain rehousing with the council, the Tribunal determined to suspend execution of the eviction order for a period of two months from the date of this decision.
- 31 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.

Ruth O'Hare

19 November 2024

Legal Member/Chair

Date