



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/24/3083

Re: Property at 50 Linn Avenue, Largs, KA30 9JU (“the Property”)

Parties:

Mr William Adair, 13 Lamont Avenue, Bishopton, PA7 5LJ (“the Applicant”)

Ms Melissa McIntosh, 50 Linn Avenue, Largs, KA30 9JU (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction be granted

- **Background**

1. This was a case management discussion to consider the application made by the Applicants dated 4th July 2024 for an order for repossession of the Property in terms of Rule 66 of the Tribunal Rules. The CMD took place by teleconference.
2. The Applicant is the Landlord in a Short Assured Tenancy with the Respondent who is the tenant. The Applicant has title and interest by virtue of owning the property. The joint owner of the Property is Mrs Patricia Adair who has consented to the raising of this action.
3. Mr Alistair Meek from Chap advised that they were instructed to represent Ms McIntosh and he advised that she was seeking a local authority tenancy and was waiting on an offer. On 25th November Mr Meek sent an email to the Tribunal confirming an offer of tenancy had been received and the tenant was seeking to move out this week.

4. The Applicant had lodged and the Tribunal had sight and considered the following documents:-
 - a. Application for repossession dated 4th July 2024
 - b. Copy Tenancy Agreement for the Property dated 13th March 2014
 - c. Copy AT5 Notice dated 13th March 2014
 - d. Notice to Quit dated 22nd April 2024 giving notice to leave by 14th June 2024
 - e. S33 Notice dated 22nd April 2024 giving notice to remove by 22nd June 2024
 - f. Certificate of Intimation from Sheriff officers certifying notice to quit and s33 notice was served on the tenant by letterbox service on 22nd April 2024.
 - g. S11 notice to North Ayrshire Council
 - h. Email to North Ayrshire Council sending a copy of the s11 notice dated 3rd July 2024
5. The Tribunal sent a direction to the Applicant and Respondent asking if Mrs Patricia Adair was to be a joint applicant or if not to ask for her written consent to the raising of this application as she is a joint owner in the Property. and inviting their views on whether it may be reasonable or not for the eviction to be granted.
6. The Applicant responded with a letter of consent from Mrs Adair and the Respondent via her agent replied advising that she had accepted an offer of a house from the Council and was awaiting the keys.

The Discussion

7. The Applicant did not attend but was represented by his solicitor, Mr Kenneth Caldwell who attended on the teleconference. The Respondent did not attend on the call either but was represented today by Ms Andrea Gibson from CHAP.
8. The Legal Member explained the purpose and order of the proceedings today and invited the Applicant's solicitor to explain what they were seeking.
9. The Applicant's solicitor Mr Caldwell explained that he was seeking an order for possession today. He advised that the appropriate notices were served on the Respondent after he had been consulted, and that the Tenant had been made aware before then of the landlord's intention to sell the Property. He advised that his client wished to retire from letting properties altogether. He had 3 properties to let and has now sold 2 and this is his remaining property which he wishes to sell when the tenancy ends to supplement his retirement income from the capital.
10. Mr Caldwell confirmed under questions that there were no issues with the tenancy or how the Tenant has conducted the tenancy. He advised that he understood that the Tenant has an offer of tenancy and the rent was paid up to the 13th December which he advised allowed her time to move out. However he was seeking the order just in case of any issues and submitted that in the circumstances there was no prejudice to the Tenant and that it would be reasonable for the order to be granted today.
11. Ms Gibson on behalf of the Respondent, confirmed that the Respondent had been offered a new social tenancy and has now received the keys although

she has not yet moved out of this tenancy. Ms Gibson advised she had no objection to the order being granted as her client would be leaving the Property shortly.

Findings in Fact

12. The Applicant and Respondent entered into a short assured tenancy of the Property for a period of one year from 13th March 2014 to 14th March 2015
13. The Applicant is the Landlord and served a Form AT5 on the Respondent who is the Tenant prior to the creation of the tenancy.
14. The Tenancy is a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988.
15. The Applicant has served a Notice to quit dated 22nd April 2024 terminating the contractual tenancy on 14th June 2024.
16. A S33 notice was served on the Respondent giving 2 months' notice that they required possession of the Property by 22nd June 2024.
17. The Applicant wishes to retire from being a landlord and wishes to sell this property to supplement his retirement income.
18. The Respondent who is the tenant has not vacated the property, but has accepted an offer of housing from the Council and has just received the keys.
19. A s11 notice in terms of the Homelessness etc. (Scotland) Act 2003 was served on the Local Authority.
20. The Tribunal finds it reasonable that an order for eviction be granted.

Reasons for Decision

21. The Applicants entered into a Short Assured Tenancy with the Respondent on 13th March 2014 the original term of the tenancy was one year and one day and an AT5 form was served prior to that date. The Applicant has served a notice to quit terminating the tenancy on an ish or termination date namely 14th June 2024. He has also given notice of his intention to require possession in terms of S33 of the Act.
22. S33 of the Act says "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 for Scotland may make an order for possession of the house if it is satisfied-
 - a) That the short assured tenancy has reached it's ish
 - b) That tacit relocation is not operating
 - c) That no further contractual tenancy is for the time being in existence and
 - 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.

The period of notice required to be given under S33 (1) (d) above is two months, in accordance with the legislation. 2 months' notice has been given.

23. The Short Assured tenancy has reached its ish, tacit relocation is not operating and there is no further contractual tenancy in existence, so the Applicant having given adequate notice in terms of S33 above, can and has

- applied to repossess the Property. However since April 2020 and Section 2 and Schedule 1 of the Coronavirus (Scotland) Act 2020, there has been a change to the law on repossessions and before an order for possession is granted the Tribunal has to be satisfied that it is reasonable to grant the order.
24. The Tribunal is able to make any order at a case management discussion as it can after a Hearing. The Tribunal considered carefully the submissions from the Applicant and the written evidence it had before it.
 25. The Tribunal is satisfied the appropriate notices have been served bringing the contractual tenancy to an end and giving notice under S33 as well as notice to the local authority.
 26. The Applicant has served the relevant notices over 6 months ago and the Respondent has confirmed that she has been in contact with the council about rehousing she has an offer of a new house and also now has the keys but has not yet moved in. The Applicant wishes to have a definite date to get repossession and given the Respondent has accepted a new tenancy, has received the keys and that any eviction order granted today cannot be enforced for at least 30 days this gives time for the Respondent to move out. The Respondent is not opposing the order. The Tribunal balancing the interests of both parties, finds it is reasonable to grant an order for repossession at this CMD and that a hearing is not required.

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.

Jan Todd

Legal Member/Chair

Date: 27th November 2024