



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/24/0734

Property: 5 Church Street, Ladybank, Fife KY15 7LA ("Property")

Parties:

Kennie Properties Ltd, Unit 4, Greendykes Industrial Estate, Broxburn, West Lothian EH52 6PG ("Applicant")

Andrew Donaldson and Alexandra Edle Von Scheifner, 5 Church Street, Ladybank, Fife KY15 7LA ("Respondent")

Advisers, 26 Cairnie Street, Arbroath DD111 3BL ("Respondent's Representative")

Tribunal Members:

Joan Devine (Legal Member)

Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("Tribunal") determined that an order for possession of the Property should be made but delays enforcement thereof until 31 January 2025.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: Short Assured Tenancy Agreement which commenced on 29 June 2015; AT5 dated 28 June 2015; Notice to Quit and Notice in terms of section 33 of the Housing (Scotland) Act 1988 ("1988 Act") both dated 17 November 2023; sheriff officer certificate of service of the notices on each Respondent on 29 November 2023 and notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 13 February 2024.

A Case Management Discussion ("CMD") was fixed for 2 July 2024 to take place by conference call. At the request of the Respondent the CMD was postponed until 28 November 2024 to allow the CMD to take place in person.

On 18 June 2024 the Respondent lodged a written representation in which they submitted it was not reasonable to grant an order for possession. On 25 June 2024 the Applicant lodged a written representation in which they submitted it was reasonable to grant an order for possession.

Case Management Discussion (“CMD”)

A CMD took place on 28 November 2024. The Applicant was represented by Mandy Kennie, property manager for the Applicant, and Helen Couser of Fife Lettings. The Respondent was in attendance and were represented by Donald Pirie of the Respondent’s Representative.

Ms Kennie told the Tribunal that the Applicant owned two rental properties. One had been sold and they now wished to sell the Property as they wish to exit the private rental market. The Tribunal noted there is a security over the Property. Ms Kennie said that if the Applicant cannot obtain possession and sell that would probably have a negative financial impact on the Applicant. The Tribunal noted that the papers indicated there had been a suggestion that the Respondent would purchase the Property. Ms Kennie said that was correct but the purchase price proposed had been significantly below market value.

Mr Pirie told the Tribunal that the Respondent had been a good tenant who had never been in arrears of rent. He said the Respondent had occupied the Property since 2015 and the rent remained at £675 per month. He said the Respondent did wish to buy the Property. He said the Respondent had seen a draft home report which did not take account of repairs required at the Property. He said that the Respondent had a loan in principle approved and were also due to receive an inheritance. He said that there had been a family dispute regarding who should be the executor of the estate but that had no been resolved and a property, which was part of the estate, is now to be sold. Mr Pirie could not say how long it would take for the inheritance to be available. In response to a question from the Tribunal he said that if the Parties agreed a price for the Property today, the Respondent would not currently be in funds to settle the purchase.

Mr Pirie said that the Respondent lives in the Property with their 18 year old son who is at college in Dundee. He said that Mr Donaldson owns a butcher business which he runs from let premises. He said that Ms Von Scheifner owns a café. He said she owns the business and the building from which it trades. He said that both businesses are in close proximity to the Property. He said that Mr Donaldson also has a kilt business which he runs from the third bedroom in the Property.

The Tribunal asked if the Respondent had attempted to find alternative accommodation. Mr Pirie said they had offered for another property in Ladybank but

had been unsuccessful. Ms Von Scheifner said she looks for private rented properties in Ladybank but there is nothing available. The Tribunal asked if contact had been made with the local authority, Mr Pirie said there had not. The Tribunal asked about the proximity of other towns to Ladybank. Mr Pirie said that Glenrothes was about 5 miles away and Cupar was about 10 miles away. He said that Kirkcaldy was close by. Mr Pirie said that the Respondent's son would be negatively impacted if an order was granted in that his social life would be disrupted. Mr Donaldson said that he wished to live in the country rather than a town and that a garden was required for his dog. He said that he did have a car. Ms Von Scheifner said that she does not drive.

Ms Couser said that the draft home report was prepared in 2023 and contained a valuation of £225,000. The Tribunal noted that the papers indicated that the offer from the Respondent to purchase had been £145,000.

Ms Couser said that Fife Lettings have been marketing rental properties with 3 bedrooms. She noted that the Respondent had not contacted the local authority who would have a duty to house the Respondent if they became homeless. She said that there are public transport links to Ladybank in that there is a bus and train service.

The Tribunal asked the Parties if there were factual matters that they thought should be explored at an evidential hearing. Mr Pirie said that there were no factual matters in dispute and the Respondent was content for the Tribunal to make a decision at the conclusion of the CMD.

Mr Pirie asked the Tribunal to refuse to grant the order failing which to continue the CMD to allow negotiations regarding the purchase of the Property by the Respondent to take place. He said that now the dispute regarding the estate in England had been resolved, the Respondent would be able to submit a higher offer to purchase the Property.

Ms Kennie asked the Tribunal to grant the order for possession. She said the Applicant wished to market the Property and sell for market value.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement dated which commenced on 29 June 2015.
2. The tenancy was for the period commencing 29 June 2015 to 30 December 2015 and month to month thereafter.
3. A Notice to Quit dated 17 November 2023 was served on the Respondent stating that the tenancy would terminate on 30 January 2024.

4. A Notice in terms of Section 33 of the 1988 Act dated 17 November 2023 was served on the Respondent stating that possession of the property was required on 30 January 2024.
5. The tenancy reached its *ish* on 30 January 2024 and is not continuing by tacit relocation.
6. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003.

Reasons for the Decision

The Parties told the Tribunal there were no evidential issues to be resolved as the factual background was agreed. The Tribunal noted that the tenancy had been properly created as a short assured tenancy and that a Section 33 Notice and Notice to Quit had been served on the Respondent giving two months' notice that the Applicant required possession of the Property.

The Tribunal considered the written submissions lodged and the oral representations made at the CMD regarding the question of reasonableness and determined to make an Order for possession of the Property in terms of Section 33 of the 1988 Act.

Mr Pirie sought a continuation of the CMD to allow the Parties to negotiate regarding the purchase of the Property. The figures discussed at the CMD indicated the Parties were quite far apart on price. In any event, the Tribunal considered that it is not the function of the Tribunal to facilitate such a negotiation. The Applicant wished to exit the private rented market. The Respondent's position was that it was not reasonable to grant an order for eviction as the Property is close to their places of work and they wish to stay in the village of Ladybank where they are settled. The Tribunal noted that there are other towns close by with transport links to Ladybank such as Glenrothes, Cupar and Kirkcaldy. In addition, Mr Donaldson has a car. The Tribunal did not consider that the circumstances outlined were such that the Applicant should be denied the ability to leave the private rental market. In all the circumstances the Tribunal determined that it was reasonable to issue an eviction order.

Decision

The Tribunal grants an Order for possession of the Property but delays enforcement thereof until 31 January 2025.

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.

Joan Devine

**Joan Devine
Legal Member**

Date : 28 November 2024