



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 (“the 1988 Act”) and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/EV/24/4078

Re: Property at 36 Tulligarth Park, Alloa, Clackmananshire, FK10 2DD (“the Property”)

Parties:

Mr Walter Wheeler, 29 Coats Crescent, Alloa, Clackmananshire, FK10 2AQ (“the Applicant”)

Mr John Stirling, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for the order for possession should be granted.

Background

1. The application received on 3 September 2024 sought an eviction order under Rule 66 on the basis that the Short Assured Tenancy had been brought to an end by service of the relevant notices. Supporting documentation was submitted, including a copy of the tenancy agreement, AT5, Notice to Quit, Section 33 Notice and section 11 Notice to the local authority. The Short Assured Tenancy began on 1 July 2017.
2. A payment application in respect of rent arrears arising from this tenancy had previously been lodged by the Applicant. Both applications were subsequently conjoined and called on the same date for a Case Management Discussion

("CMD") but were dealt with separately as there was an additional Respondent in respect of the payment application (the Guarantor in respect of the tenancy).

3. Following initial procedure, the application was accepted by the Tribunal on 3 December 2024. Sheriff Officer service on the Respondent at the tenancy address was unsuccessful and service thereafter took place by way of Advertisement on the Tribunal website from 12 February 2025 until 14 March 2025 (the date of the Case Management Discussion – "CMD").
4. No written representations were received from the Respondent nor any contact made with the Tribunal prior to the CMD.

Case Management Discussion

5. The CMD took place by telephone conference call on 14 March 2025 at 10am. The Applicant, Mr Walter Wheeler, was in attendance. The commencement of the CMD was delayed by 5 minutes to give the Respondent an opportunity to join late but he did not do so.
6. Following introductions and introductory comments by the Legal Member, Mr Wheeler addressed the Tribunal in respect of his application. He explained the background to the application. The Respondent had experienced some difficulties in 2023 with his marriage, his employment and his mental health and he incurred some rent arrears at that stage. Mr Wheeler said that he had contacted the Respondent and offered him some support, including financial support in terms of an agreement allowing the Respondent to pay back the arrears by way of instalment. The Respondent lost that employment but was only out of work for a few months and has been back in employment with a new employer, McQueen's Dairies, since then, which Mr Wheeler understands to be continuing. Mr Wheeler thought the Respondent was getting back on track as rent payments resumed but he then fell into arrears again in April 2024. The Respondent has not made any payments at all since March 2024 and arrears currently amount to £7,282.82. The only contact Mr Wheeler received from the Respondent was an email dated 6 April 2024 (lodged with the Tribunal) in which he had explained that his wages had been arrested in relation to child support payments. However, the Respondent has stopped communicating at all with Mr Wheeler, having requested previously that Mr Wheeler only contacts him by way of email.
7. Around this time, Mr Wheeler was diagnosed with serious health conditions, including lymphoma, lung cancer and low platelets, in respect of which he has had to undergo a lot of treatment which is still ongoing and impacts on his ability to deal with the tenancy issues. He and his wife are both 74 years old and are finding the whole thing too much to manage. They accordingly decided to sell the Property as they do not intend to continue being landlords. This was the reason for serving notice on the Respondent in relation to his short assured tenancy. Mr Wheeler confirmed that they still have another property which they let out but that will be coming to an end too.

8. Mr Wheeler believes that the Respondent is still in occupation of the Property. He stated that the Respondent does tend to be away for most of the week with his work, which involves sales, but can be seen around the Property at weekends. Mr Wheeler often sees windows open, etc. In addition, the Respondent's works vehicle is often parked at the Property. Around five or six weeks ago, Mr Wheeler required to contact the Respondent's employers directly, as a number of their vehicles were being parked near the tenancy property. They were very reasonable and arranged for the other vehicles to be removed, other than the Respondent's vehicle, as they knew he was still living there. Accordingly, Mr Wheeler confirmed that he was still seeking an eviction order as he considers this still to be necessary. He confirmed that he understands the Respondent to live there alone, although the Respondent had previously asked if his brother could live with him there for a period, which Mr Wheeler agreed to. He thinks the Respondent is in his forties.
9. The Tribunal was aware from the conjoined payment action which was being dealt with separately today (as it involved the Respondent's father as an additional Respondent, in his capacity as Guarantor in respect of the tenancy) that the Respondent's father was also liable in respect of the rent arrears and that there may ultimately be an agreement with the Respondent's father in respect of payment. However, Mr Wheeler stated that this would not change his position in respect of his wish to recover the Property in order to sell it, given his reasons for wishing to do so, all as outlined above.
10. The Tribunal Members adjourned to discuss the application in private and, on re-convening, it was confirmed that the Tribunal had decided to grant the eviction order sought. Mr Wheeler was informed that the decision paperwork would be issued shortly, there was brief discussion about the timescale for enforcement of the eviction order and Mr Wheeler was thanked for his attendance.

Findings in Fact

1. The Applicant is the joint owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Short Assured Tenancy which commenced on 1 July 2017.
3. The Applicant ended the contractual tenancy by serving on the Respondent a Notice to Quit and Section 33 Notice dated 30 May 2024 by way of Sheriff Officer service on 3 June 2024.
4. The end of the tenancy and notice period in terms of the notices was specified as 1 September 2024, an ish date in terms of the tenancy.
5. Both notices were in the correct form, provided sufficient notice and were validly served validly on the Respondent.

6. The Respondent has remained in possession of the Property following expiry of the notice period and is understood to still be in occupation.
7. This application was lodged with the Tribunal on 3 September 2024, following expiry of the notice period.
8. The Applicant is 74 years old, has some serious health conditions and wishes to sell the Property once he obtains vacant possession.
9. No rent payments have been made by the Respondent since in or around March 2024 and rent arrears now amount to over £7,000.
10. The Respondent has not engaged with the Applicant since in or around April 2024.
11. The Respondent did not lodge any written representations or attend the CMD.

Reasons for Decision

1. The Tribunal was satisfied that pre-action requirements including the service of the Notice to Quit and Section 33 Notice in terms of the 1988 Act had been properly and timeously carried out by the Applicant prior to the lodging of the Tribunal application.
2. Section 33(1) of the Act states that an order for possession shall be granted by the Tribunal if satisfied that the short assured tenancy has reached its finish; that tacit relocation is not operating; that the landlord has given to the tenant notice stating that he requires possession of the house; and that it is reasonable to make an order for possession. The Tribunal was satisfied that all requirements of Section 33(1) had been met.
3. As to reasonableness, the Tribunal considered the background to the application, all the supporting documentation lodged and the oral submissions of Mr Wheater at the CMD. The Tribunal was satisfied that the Applicant's reason for wishing to recover possession of the Property was in order to sell it, primarily due to health concerns of the Applicant and his ongoing treatment in respect of same. The Tribunal noted that the Applicant and his wife (the joint landlord) are both 74 years old and simply no longer wish to let the Property out, due to the stresses of managing the tenancy, on top of the Applicant's health. The Tribunal noted that the Applicant had lodged a lot of supporting documentation, including a letter from a selling agent dated 28 May 2024, confirming their instruction to act in the proposed sale of the Property by the Applicant. The Tribunal noted the high level of rent arrears which have accrued, the background to same, that they now exceed £7,000 and the lack of any payment or engagement from the Respondent since April 2024.
4. The Tribunal also took into account the circumstances of the Respondent, as far as known to the Tribunal from the information provided by the Applicant. It

appeared that he may have had some personal, employment and financial issues during 2023 and the early part of 2024, but the Tribunal considered it significant that he is understood to have gained further employment and to still be employed currently. He has offered the Applicant no explanation for the ongoing rent arrears or his failure to engage at all with the Applicant. The Respondent had not entered into the Tribunal process and the Tribunal therefore had no material before it either to contradict the Applicant's position nor to advance any reasonableness arguments on behalf of the Respondent. Accordingly, the Tribunal determined, on balance, that it was reasonable for an order for recovery of possession of the Property to be granted at this stage and that there was no need for an Evidential Hearing.

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.

Nicola Weir

Legal Member/Chair

14 March 2025
Date