



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

Chamber Ref: FTS/HPC/EV/24/4530

Re: Property at 407 Victoria Path, Glenrothes, Fife, KY7 6SN (“the Property”)

Parties:

Mr Keith Auchterlonie, 8 Priestfield Maltings , Pitlessie, Cupar, KY15 7UE (“the Applicant”) per his agents Lindsay’s, solicitors, Caledonian Exchange 19A Canning Street Edinburgh EH3 8HE (“the Applicant’s Agents”)

Miss Holly Masson, 407 Victoria Path, Glenrothes, Fife, KY7 6SN (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory ground being established and the statutory procedure having been carried out, it is reasonable to grant the Order sought and so the Tribunal granted the Order.

Background

1. By application received on 27 September 2024 (“the Application”), the Applicant’s Agents applied to the Tribunal for an Order for possession of the Property based on the service of statutory notices to bring the tenancy to an end. The Application comprised copy Notice to Quit and copy Section 33 Notice with proof of service, copy short assured tenancy agreement with relevant AT5 between the Parties and copy notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Fife Council, being the relevant local authority. The Application explained that the Applicant required to terminate the tenancy in

order to sell the Property to fund his retirement and also explained that the Respondent has fallen into rents arrears.

2. The Application was accepted by the Tribunal and a Case Management Discussion (the "CMD") was fixed for 1 May 2025 at 14.00 by telephone conference. The CMD was intimated to the Parties and to the Respondent, in particular, by Sheriff Officer on 26, February 2025,
3. Prior to the CMD, the Applicant submitted an Affidavit expanding on his personal circumstances and advising that he is over retirement age and requires to sell the Property to fund his retirement. He states that the Respondent has fallen into rent arrears and that the payments received do not cover the secured mortgage lending on the Property. He confirms his intention to sell off his property portfolio and that he requires vacant possession to achieve the best sale price. An updated rent statement showing arrears of £2,177.26 to March 2025 was also submitted.
4. Also, prior to the CMD the Respondent submitted a statement by email confirming that she continues to reside in the Property with her two children, one of whom has autism. She confirmed that she has rent arrears and explained that she had paid £500.00 on 28 April 2025 and stated that she intends to set up a payment plan. The Respondent set out various complaints in respect of the condition of the Property and complained of the lack of repairs. She stated that she would like to leave the Property but could not do so due to the Council's rules for assessing potentially homeless applications.

CMD

5. The CMD took place on 1 May 2025 at 14.00 by telephone. The Applicant did not take part and was represented by Mr. Gardner of the Applicant's Agents. The Respondent did not take part and was not represented.
6. The Tribunal explained that the purpose of the CMD and that advised that it was satisfied that the statutory procedure for the Application had been carried out correctly. The Tribunal explained that it was required also to consider the reasonableness of the Application.
7. The Tribunal asked Mr. Gardner his views on the Respondent's email and if he considered it an opposition to the Application. Mr, Gardner stated that he considered that email not to be in opposition to the Application and that it set out the Respondent's intention to vacate the Property if she could be re-housed. Mr, Gardner summarised the Applicant's position in respect of his intention to

sell. With regard to the repair of the Property, Mr. Gardner advised that the Applicant accepted that there had been a historic repairs issue which had been resolved but that new matters had been notified. He noted that the Respondent had not appeared at the CMD to oppose the Application.

8. The Tribunal advised Mr, Gardner that it agreed with his views and summation of the Respondent's email.

Findings in Fact

9. From the Application, the Parties' written representations and the CMD, the Tribunal made the following findings in fact: -
 - i) There is a short assured tenancy of the Property between the Parties;
 - ii) A valid Section 33 Notice and a valid Notice to Quit were served;
 - iii) The Respondent has not vacated the Property but is prepared to do so if housed by the local authority;
 - iv) The Respondent does not oppose the Application;
 - v) The Applicant intends to sell the Property due to financial pressures and to fund his retirement and requires vacant possession to do so;
 - vi) The Applicant relies on the rent as source of income and to meet the cost of the mortgage commitment on the Property;
 - vii) The Respondent is in considerable arrears of rent;
 - viii) The Respondent is single parent on two dependent children, one of whom has special needs and
 - ix) The Respondent has made contact with the local housing authority in respect of alternative accommodation.

Decision and Reasons for Decision

10. The Tribunal had regard to all the information before it and to its Findings in Fact.
11. Having found that the eviction Ground has been met, the Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "*may do anything at a case management discussionincluding making a decision*". The Tribunal took the view that it had sufficient information to make a decision and so proceeded to determine the Application.
12. The statutory ground and procedure being established, and the Application not being opposed, the issue for the Tribunal was to determine if it is reasonable to grant the Order.
13. The Tribunal had regard to the circumstances of the Parties.

14. The Tribunal must establish, consider and properly weigh the “whole of the circumstances in which the application is made” (Barclay v Hannah 1947 S.C. 245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.
15. The Tribunal then looked to balance the rights and interests of both parties.
16. The Tribunal accepted that the Applicant who is over retirement age requires to sell the Property to fund his retirement and requires vacant possession to achieve the best price. The Tribunal accepted that the Applicant relies on the rental income in order to meet the running costs of the Property and had regard to the fact that the Respondent is in rent arrears.
17. For the avoidance of doubt, the Tribunal placed no weight on the Respondent’s comments in respect of repair to the Property as these were not evidenced nor did they have direct relevance to the issue at hand.
18. With regard to the Respondent’s position, the Tribunal note that the Application was not opposed and that, if evicted and made homeless, the Respondent and her dependent children would have protection in terms of Part II of the Housing (Scotland) Act 1987 and so would be able to access advice and assistance on homelessness.
19. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order.

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.

Legal Member: Karen Moore

Date: 1st May 2025