



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/21/0550

Re: Property at 25 Cypress Lane, Hamilton, ML3 8SR (“the Property”)

Parties:

Mr Paul Sweeney, 51 Skye Wynd, Hamilton, ML3 8BF (“the Applicant”)

Ms Linsey Burns, 25 Cypress Lane, Hamilton, ML3 8SR (“the Respondent”)

Tribunal Members:

Petra Hennig McFatridge (Legal Member) and Leslie Forrest (Ordinary Member)

Decision in absence of the Respondent

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

A Background:

[1] The application for an order for Possession on Termination of a Short Assured Tenancy in terms of S 33 of The Housing (Scotland) Act 1988 was made on 11 March 2021.

[2] The following documents were lodged by the Applicant prior to the date of the Case Management Discussion (CMD):

1. Copy tenancy agreement dated 25 November 2017
2. Copy AT5
3. Copy Notice to Quit dated 29 June 2020
4. Copy S 33 Notice dated 29 July 2020
5. Recorded delivery documentation showing the Notice to Quit and S 33 Notice were sent on 29 July 2020 and signed for by the Respondent on 30 July 2020.
6. S 11 Notice Homelessness etc (Scotland) Act 2003
7. Copy email sending same dated 5 April 2021.

8. Email dated 27 May 2021 to the Tribunal setting out the Applicant's position with regard to the reasonableness of the application.

The documents are referred to for their terms and held to be incorporated herein.

[3] A Case Management Discussion (CMD) was scheduled for 6 July 2021 and both parties notified of the date and time. Service on the Respondent by Sheriff Officers was confirmed to have taken place on 2 June 2021. The intimation to the parties included the information that the Tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision on the application.

[4] The Respondent had been given the 14 days notice required in Rule 24 of the Rules of Procedure. No representations were received from the Respondent.

B The Case Management Discussion:

{5} The Respondent did not attend and made no representations at the CMD. The Applicant took part in the CMD by telephone conference.

[6] The Applicant confirmed that the tenancy had started on 25 November 2017 and initially the Respondent had moved in with her daughter. The daughter moved out around 2 years ago and now lives with her father. The Respondent lives in the property alone. As stated in his email of 27 May 2021 there are ongoing issues and complaints from neighbours and this is getting worse rather than better. The Respondent is not engaging in any discussion about the tenancy with the Applicant and has so far not been prepared to discuss the future of the tenancy with him in any detail. He has had minimal contact from her over the last year and a half. It took 3 attempts for him to carry out the most recent gas safety inspection. Although a date had been arranged the Respondent had not granted access and at his expense he had to rearrange the inspection with the plumber. The drug and antisocial behaviour issues are ongoing and the property is a top floor two bedroom flat in a nice estate in Hamilton in a quiet neighbourhood. The Applicant stated he has more than one property and the property address stated in error in clause (t) of the tenancy agreement was another property he owned. He had forgotten to change the clause from a previous tenancy agreement. This should not impact on the tenancy documentation.

C Findings in Fact:

1. The Applicant and the Respondent entered into a Short Assured Tenancy on 25 November 2017 for an initial period of 6 months in terms of Clause 2 and the Schedule 2 of the Tenancy Agreement.
2. Document AT5 was receipted and signed by the Respondent on 25 November 2017
3. No specific notice period is stated in the tenancy agreement.
4. Notice to Quit was served on the Respondent recorded delivery and signed for on 30 July 2020 advising of the termination of the tenancy on the termination date of 25 November 2020.

5. Tacit relocation is not operating due to the Notice to Quit. .
6. Notice in terms of S 33 (1) d of The Housing (Scotland) Act 1988 was served on the Respondent recorded delivery and signed for on 30 July 2020 advising of the intention to repossess the premises on 1 February 2021.
7. Notice to the Local Authority was given in terms of S 11 of the Homelessness Etc (Scotland) Act 2003.
8. The Respondent continues to occupy the property at the date of the CMD on 6 July 2021.
9. The Respondent lives alone at the property.
10. Over recent months the behaviour of the Respondent has negatively impacted on the neighbours, who have made complaints to the Applicant.
11. The Respondent has not been engaging in any attempts of the Applicant to discuss the ongoing issues with the tenancy and to resolve them.
12. The Applicant is reasonably entitled to use the process under S 33 to gain repossession of his property in these circumstances.

D Reasons for the Decision:

[7] The Tribunal considered that the material facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The documents lodged are referred to for their terms and held to be incorporated herein.

[8] The Tribunal concluded it was not necessary to fix a hearing as the Respondent had not attended the CMD, did not oppose the order being granted and the documents lodged evidenced sufficiently the matters required to determine whether the legal tests for an order in terms of S 33 of the Housing (Scotland) Act 1988 are met. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the information given at the CMD.

[9] The legal test for an eviction order is set out in S 33 of the Housing (Scotland) Act 1988 as amended by the Coronavirus (Scotland) Act 2020. The Coronavirus (Scotland) Act 2020 applies to this case as the Notices were served after 7 April 2020 when the Act came into force.

S 33 states:

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 finish;

(b) that tacit relocation is not operating; and

(c) that no further contractual tenancy (whether a short assured tenancy or not) 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.

(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 time 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.

In short, in terms of S 33 (1) of the Housing (Scotland) Act 1988 an order for possession of the house under a Short Assured Tenancy shall be made if the Tribunal is satisfied that:

1. The short assured tenancy has reached its end
2. That tacit relocation is not operating
3. That there is no further contractual tenancy in existence
4. That the landlord has given to the tenant notice that he requires possession of the house.
5. That it is reasonable in all the circumstances to grant the order.

[10] The facts of the case are not in dispute. Fair notice of all aspects of the Applicant's case had been provided to the Respondent. No representations had been received. The Tribunal thus was entitled to consider the Applicant's representations are factually correct.

The Tribunal was satisfied on the basis of the documents lodged that that all requirements for recovery of possession in terms of the Housing Scotland Act 1988 had been complied with.

[11] The tenancy document and AT5 document show that the tenancy is a Short Assured Tenancy which has reached its end. The landlord had served a notice to quit with the required notice period for the end on 25 November 2020 and thus tacit relocation does not operate. The landlord had served on the Respondents a notice in terms of S 33 (1) d of the Housing (Scotland) Act 1988 with the required 6 months notice period. The Notice to Quit ended the contractual tenancy at an end date and thus the tenancy became a statutory assured tenancy in terms of S 16 of the Housing (Scotland) Act 1988.

[12] Even if the formal tests of S 33 (1) of the Housing (Scotland) Act 1988 are met, the Tribunal still has to consider whether it is reasonable in all the circumstances to grant the eviction order.

The Tribunal notes that the Respondent has not participated in the tribunal process at all and has not raised any specific issues to be considered when applying the test of reasonableness of an eviction order.

The Tribunal is satisfied that the Respondent lives on her own and does not have children or other vulnerable dependents residing with her. The Applicant had set out his underlying reasons for making the application in his email of 27 May 2021, which the Respondent was made aware of when the papers were served on her. The email set out that the behaviour of the Respondent at the property negatively impacts on

the neighbours. The Police attended on several occasions and the neighbours complain of drug taking at the property. The Applicant has tried to engage the Respondent in discussing the tenancy and she has not been prepared to engage in any meaningful discussion with him.

[13] The Tribunal thus considered that on balance and taking into account all the information available it is reasonable to grant the eviction order in light of the ongoing issues with communication with the Respondent and the impact of the tenancy on the neighbouring properties.

Decision:

The Tribunal grants the order for recovery of possession.

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.

P. Hennig McFatridge

Petra Hennig McFatridge

6 July 2021

Legal Member/Chair

Date