



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/21/2010

Re: Property at 12 Mair Avenue, Dalry, KA24 4DQ (“the Property”)

Parties:

Kim Calder, Mandy Friels, 16 James Street, Dalry, Ayrshire, KA24 5ET; 3 Smithy Row, Kirtlebridge, Lockerbie, DG11 3LZ (“the Applicant”)

Mr Scott Hood, 12 Mair Avenue, Dalry, KA24 4DQ (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Helen Barclay (Ordinary Member)

Decision in absence of the Respondent

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 18th August 2021 for an order for repossession of the Property in terms of Rule 66 of the Tribunal Rules. The CMD took place by teleconference as a result of the continuing current requirement for social distancing.
2. The Applicants are the Landlords in a Short Assured Tenancy with the Respondent who is the tenant. The Applicants have title and interest by virtue of owning the property.
3. The Applicants were personally present on the teleconference. The Respondent did not attend on the call and was not represented. He has made no written representations but was served a copy of the application and the accompanying papers by sheriff officer on 8th October 2021 and so the Tribunal was satisfied the Respondent had due intimation of the CMD and that it would be appropriate to proceed in his absence.

4. The Applicant had lodged and the Tribunal had sight and considered the following documents:-
 - a. Application for repossession dated 18th August 2021
 - b. Copy Tenancy Agreement for the Property dated 9th and 10th June 2009
 - c. Copy AT5 Notice dated 8th June 2009
 - d. Notice to Quit dated 28th August 2020 giving notice to leave by 13th December 2020
 - e. S33 Notice dated 28th August 2020 giving notice to remove by 4th March 2021
 - f. Certificate of Execution of notice to quit and s33 notice by Sheriff officer dated 1st September 2020
 - g. S11 notice to North Ayrshire Council acknowledged as received on 13th September 2021
 - h. Written representations from the Applicants confirming their plans for the Property and why it would be reasonable for the order to be granted to either allow their mother to move into the Property if she chooses to do so or to sell the Property.

The Discussion

5. The Legal Member explained the purpose and order of the proceedings today and invited the Applicants to explain what they were seeking and why. The Tribunal waited approximately until 14.10 to see if the Respondent wished to join the call but he did not join and has not lodged any written representations.
6. The Applicant Ms Friels explained that she and her sister were seeking an order for possession today. She advised that the appropriate notices were served on the Respondent last year with the help of her solicitor Ms Campbell from Murray Little and Knox. She confirmed that when the notices were served on the Respondent he had phoned their solicitor to advise he had been told by the Council that he wouldn't be able to get assistance with housing until he received an order of eviction from the Tribunal. Under questions she confirmed that he lived there with she believed his son but she confirmed the son was over the age of 16.
7. Ms Friels further explained that the Property had been her grandmothers and now owned by herself and her sister and that it was intended to be a house for their mother when she needed it. She explained that her mother is older now and her health had deteriorated and so her house was put up for sale around the time that notices were served on tenant but it sold really quickly and so her mother had to move in with her. She further advised that if and when they get repossession of the Property her mother can then choose if she wishes to move into the Property. If however she decides to stay with Ms Friels then the Applicants both confirmed they wish to sell the Property to realise their capital which they now need, especially if adaptations require to be made for their mother to stay at Ms Friels house.

Findings in Fact

8. The Applicant and Respondent entered into a short assured tenancy of the Property for a period of 6 months from 13th June 2009 to 13th December 2009.
9. The Applicants are the Landlords and served a Form AT5 on the Respondent who is the Tenant prior to the creation of the tenancy.
10. The Tenancy is a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988.
11. The Applicant has served a Notice to quit terminating the contractual tenancy on 13th December 2020
12. A S33 notice was served on the Respondent giving 6 months' notice that they required possession of the Property by 4th March 2021.
13. The Respondent who is the tenant has not vacated the property.
14. The Respondent has been in contact with the council regarding rehousing.
15. A s11 notice in terms of the Homelessness etc. (Scotland) Act 2003 was served on the Local Authority 13th September 2021
16. The Tribunal finds it reasonable that an order for eviction be granted.

Reasons for Decision

17. The Applicants entered into a Short Assured Tenancy with the Respondent on 13th June 2009 the original term of the tenancy was 6 months and an AT5 form was served prior to that date. The Applicants have served a notice to quit terminating the tenancy on an ish or termination date namely 13th December 2021. They have also given notice of their intention to require possession in terms of S33 of the Act.
18. 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 six months, in accordance with the legislation as amended. 6 months' notice has been given.

19. 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.
20. 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 Applicants and the written evidence it had before it. The Applicants have served the relevant notices over a year ago and the Respondent has indicated to their solicitor that he has contacted the council about rehousing

but the Council have advised they cannot or will not assist until he has an order for eviction. The Applicants wish to regain possession of the Property so that their mother can be given the choice to move there or if she chooses to stay with her daughter, so that it can be sold. Given it has now been over a year since the S33 notice was served, given the Landlords wish to allow their mother the right to stay in the Property as she has sold her own house and is now staying with the second Applicant or if their mother declines the offer to move that they wish to sell the property, and given the council does have a duty to rehouse or give advice on this to the Respondent then 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.

- **Decision**

An order for repossession was granted.

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: Jan Todd

Date: 11th November 2021