



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 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/23/0822

Re: Property at 30 Kirktonfield Crescent, Neilston, East Renfrewshire, G78 3PX (“the Property”)

Parties:

Mrs Catherine McCarron, 282 Cleaves Quadrant, Glasgow, G53 6NR (“the Applicant”)

Miss Claire Hickey, 30 Kirktonfield Crescent, Neilston, East Renfrewshire, G78 3PX (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

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. By application received on 15 March 2023, the Applicant sought an order under Section 33 of the Housing (Scotland) Act 1988 (“the Act”) for possession of the Property on termination of a Short Assured Tenancy. The application was made in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). Supporting documentation was submitted with the application, including a copy of the Tenancy Agreement, AT5, Notice to Quit, Section 33 Notice and Section 11 Notice.

2. On 29 March, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance in respect of the application in terms of Rule 9 of the Regulations.
3. An initial Case Management Discussion (“CMD”) was fixed for 18 May 2023. The application and details of the CMD fixed were served on the Respondent by Sheriff Officer on 17 April 2023. In terms of said notification, the Respondent was given an opportunity to lodge written representations. No representations were lodged prior to the CMD. Neither party attended the CMD, which was adjourned by the Tribunal until 11 July 2023 at 10am. The Applicant emailed the Tribunal with an explanation and apology for missing the original CMD. Parties were notified of the details for the fresh CMD. Again, no representations were lodged by the Respondent in advance of the CMD.

Case Management Discussion

4. The CMD took place on 11 July 2023 by telephone conference call. The CMD was initially only attended by the Applicant, Ms Catherine McCarron. The Tribunal delayed the commencement of the CMD until 10.05am to give the Respondent an opportunity to join late but the Respondent did not do so (although subsequently joined later during the CMD, explaining that she had had the wrong time and apologising).
5. Following introductions and introductory remarks by the Legal Member, the Applicant was asked to confirm the Applicant’s position in relation to the application for eviction and it was noted that the Applicant wished to proceed. The Legal Member explained the legal test for granting such an eviction and that the Tribunal required to be satisfied on the reasonableness of granting an eviction order, even where there is no opposition from the Respondent. Reference was made to the documentation lodged with the Tribunal in support of the application. The Applicant then explained the background to the Tribunal application and also answered some questions from the Tribunal.
6. The Applicant stated that her brother is to be released from prison soon and requires to have a fixed address to be released to. It is intended that he will live at the Property and that his son, the Applicant’s nephew, will also live there. The Applicant’s nephew is currently homeless and staying with a friend but also needs a settled place to live as he has joint custody of his baby daughter and needs to be closer to her and to have a proper home where she can stay. It is felt that having family around him will help the Applicant’s brother transition into life back in the community. The reason the Applicant requires the Property back is therefore to provide a home for her family members. It was noted by the Tribunal that this is the only property the Applicant lets out and that she, herself, cannot accommodate these family members in her own home as she already has her son and daughter-in-law residing with her.
7. When asked about the Respondent, the Applicant stated that she had not really had much to do with her as she has a letting agent involved. She did state that the Respondent was generally a good tenant and had generally paid her rent,

although there had been one or two issues with this and she thinks the Respondent was struggling a bit with the rent.

8. At this point, the Respondent joined the conference call late. The Legal Member explained that the CMD was already underway and summarised the discussion so far. When asked about her position regarding the eviction order sought by the Applicant, the Respondent stated that she was happy to leave the Property and give it back to the Applicant and that, although she did not have anywhere else to go at the moment, she has been in touch with the local authority regarding obtaining temporary accommodation. She confirmed that she is still resident at the Property and resides with her two children, aged 19 and 13. The Respondent confirmed that she had been served with notice in January and that she had let the letting agents know her intentions all along. She did not wish to ask for a continuation or an opportunity to seek advice. She stated that the homelessness team is supporting her to obtain temporary accommodation. Neither party wished to add anything further.
9. The Tribunal adjourned the proceedings briefly in order to deliberate in private and, on re-convening, the Legal Member advised that the Tribunal had decided to grant the eviction order sought and that the detailed written Decision would be issued to parties shortly. The timescales for the order being issued were also explained. The likely delay in enforcement of the order as a consequence of the Cost of Living (Tenant Protection) (Scotland) Act 2022 had already been explained to the Applicant.

Findings in Fact

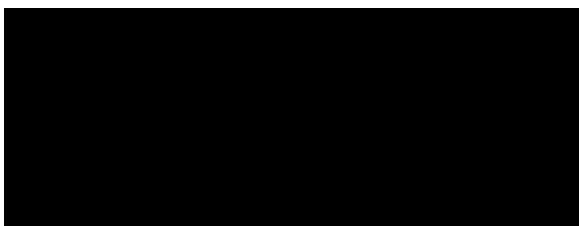
1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant by virtue of a Short Assured Tenancy which commenced on 12 March 2015.
3. The Applicant ended the contractual tenancy by serving a Notice to Quit and Section 33 Notice on 11 January 2023, specifying the end of the notice period (2 months) as 12 March 2023, an ish date in terms of the lease. Both notices were in the correct form, provided sufficient notice and were served validly on the Respondent by way of Sheriff Officer.
4. The Respondent has remained in possession of the Property following expiry of the notice period.
5. This application was lodged with the Tribunal on 15 March 2023, following expiry of the notice period.
6. The Respondent is not contesting the application.

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. 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.
2. As to reasonableness, the Tribunal considered the documentation before it and the oral submissions of the Applicant and Respondent at the CMD. With reference to the Applicant's position, the Tribunal was persuaded that the Applicant had a genuine need to recover the Property to enable her to provide accommodation for members of her family who had fairly urgent housing needs due to their own personal circumstances. Although the Respondent also had an ongoing housing need for herself and her two children, and had been a long-term tenant at the Property, it was clear from what she said at the CMD that she did not oppose the eviction order being granted and, in fact, it appeared to be her preference that an order be granted as she is seeking accommodation and temporary accommodation through her local authority, with whom she is already in contact. The Respondent confirmed having been served notice in January 2023 and stated that she had made the Applicant's letting agents aware of her position right from the outset. She had not put in representations to the Tribunal as she did not wish to oppose the eviction and was clear that she understood the position and that she did not want an opportunity to seek her own advice. In all of the circumstances, the Tribunal was satisfied that it was reasonable to grant the order sought.

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/Chair

11 July 2023
Date