



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/20/0744

Re: Property at 126 Croftspar Grove, Springboig, Glasgow, G32 0JZ (“the Property”)

Parties:

Joistwheel Limited, C/O Ladywell Business Centre, 94 Duke Street, Glasgow, G4 0UW (“the Applicant”)

Miss Gillian O'Brien, 126 Croftspar Grove, Springboig, Glasgow, G32 0JZ (“the Respondent”)

Tribunal Members:

Gillian Buchanan (Legal Member)

Decision

At the Case Management Discussion (CMD”) the Applicant was represented by Mr George Reynolds, Smart Move Estate Agents (Scotland) Limited and the Respondent was represented by Ms Fiona McPhail, Shelter.

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

- The Applicant is the heritable proprietor of the Property.
- The Respondent is the tenant of the Property in terms of a Short Assured Tenancy Agreement dated 16 July 2010.
- The initial term of the tenancy was agreed to be from 16 July 2010 for a period of 6 months.
- In terms of the tenancy it was agreed that on the expiry of the initial term the tenancy would continue on a month to month basis thereafter until terminated.
- On 23 August 2019 Sheriff Officers on behalf of the Applicant served the Respondent with a Notice to Quit and a Notice under Section 33 of the

Housing (Scotland) Act 1988, both Notices being dated 19 August 2019 (“the Notices”).

- In terms of the Notices the Respondent was required to remove from the Property on or before 16 November 2019.
- The Respondent has had due intimation of this application, the papers having been served by Sheriff Officers on 27 July 2020.

None of the foregoing facts were in dispute between the parties.

The Case Management Discussion

Submissions of Mr Reynolds for the Applicant:-

- That an order for recovery of possession of the Property should be granted.
- That the Respondent has not been in touch at all following service of the Notices.
- That the Applicant delayed lodging the application for eviction until after Christmas 2020.
- That there are rent arrears due of just under £1,500.

Submissions of Ms McPhail for the Respondent:-

- That Ms McPhail had only been instructed by the Respondent late on Friday afternoon (14th August 2020).
- That the Applicant is entitled to an eviction order and the Respondent has been advised there is no defence to an eviction order being granted.
- That this is not a rent arrears based application.
- It is not accepted that the Respondent has made no effort to discuss the position with the Applicant.
- That the Respondent is seeking a delay in execution of the eviction order under Rule 16A of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) for the following reasons:-
 - (i) The Property has been the family home for 11 years.
 - (ii) The Respondent occupies the Property with her 2 children, aged 18 and 11 years, and a dog.
 - (iii) That the Respondent is in receipt of Universal Credit and there have been issues with that.
 - (iv) That alternative accommodation needs to be found that will allow the Respondent’s 11 year old daughter to remain at her current primary school which is within walking distance of the Property. (The Applicant’s son is not working and is in receipt of Universal Credit.)
 - (v) That the Respondent has serious health issues and requires ground floor and accessible accommodation. Finding such accommodation will be challenging especially relative to any local authority accommodation and in the private sector too. Accommodation on a third or fourth floor would not be accessible.
 - (vi) That whilst it is accepted that the Coronavirus (Scotland) Act 2020 does not apply to this application a delay in execution of any eviction order until 31 October 2020 would reflect Financial Conduct Authority advice.

Further Submissions of Mr Reynolds for the Applicant

- The Property is not on the ground floor but over two floors.
- The Respondent has had ample opportunity to engage but has failed to do so and leaving it to the eleventh hour before taking advice from Ms McPhail is another example of that.
- No medical evidence has been produced by the Respondent.

Reasons for Decision

- There exists between the parties a Short Assured Tenancy.
- The tenancy has reached its ish.
- Tacit Relocation is not operating.
- Due notice to terminate the tenancy has been given to the Respondent and the Notices are valid.
- The Respondent has failed to remove.
- The Respondent has had due intimation of this application in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017.
- The Applicant is entitled to an eviction order.
- Rule 16A(d) of the Rules states that the Tribunal “*may regulate its own procedure, includingordering a delay in execution of an order by the First-tier Tribunal at any time before it is executed*”.
- The Tribunal requires to balance the interests of the Applicant in recovering possession of the Property with the unique circumstances presented by COVID19. In the circumstances and after careful consideration, the Tribunal determined it would be fair and reasonable to delay execution of the eviction order to 12 noon on 30 September 2020 to allow the Respondent a short amount of additional time to find suitable alternate accommodation.

Decision

The Applicant is entitled to recover possession of the Property and the tribunal therefore made an order to that effect with execution of that order being delayed to 30 September 2020 at 12 noon.

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

— **18 August 2020**