



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/20/1519

Re: Property at 63 Glover Street, Perth, PH2 0JP (“the Property”)

Parties:

Mr Ewart Corrigan, Mrs Vyvyen Corrigan, c/o A and S Properties Limited, 7 County Place, Perth, PH2 8EE (“the Applicants”)

Miss Lisa MacFarlane, 63 Glover Street, Perth, PH2 0JP (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against for possession of the Property under section 33 of the Housing (Scotland) Act 1988 be granted. The order will be issued to the Applicants after expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.

The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 15 July 2020, the Applicants’ solicitor applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for recovery of possession of the property at 63 Glover Street, Perth, PH2 0JP (“the Property”) in terms of Rule 66 the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a copy of the Short Assured Tenancy between the parties signed and dated 11 December 2016, an AT5 also signed and dated 9 December 2016, a Notice to Quit and a Section 33 Notice both dated 2 March 2020 together with a Sheriff Officers' Execution of Service dated 5 March 2020, a rent statement and a Notice under Section 11 of the Homelessness etc. (Scotland) Act with accompanying email to Perth and Kinross Council dated 15 July 2020.
3. On 12 August 2020, the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 1 September 2020, the Tribunal enclosed a copy of the application and advised parties on that a Case Management Discussion under Rule 17 of the Regulations would proceed on 30 September 2020. The Respondent required to lodge written submissions by 22 September 2020. This paperwork was served on the Respondent by way Andrew Fraser, Sheriff Officer, Glasgow on 2 September 2020 and the Execution of Service was received by the Tribunal administration.

Case Management Discussion

1. The Tribunal proceeded with the Case Management Discussion on 30 September 2020 by way of teleconference. The Applicants were represented by Ms Caldwell from TC Young, Solicitors. There was no appearance by or on behalf of the Respondent despite the teleconference starting 10 minutes late to allow the Respondent plenty of time to join. The CMD also considered an eviction application under case reference FTS/ HPC/CV/20/1520 in terms of which the Applicants sought a payment order for rent arrears. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD for both applications in her absence.
2. The Tribunal had before it a Short Assured Tenancy Agreement between the Applicants and the Respondent signed and dated 11 December 2016, an AT5 signed and dated 9 December 2016, a Notice to Quit and a Notice under Section 33 of the Housing (Scotland) Act 1988 both dated 2 March 2020, a Sheriff Officers' Execution of Service dated 5 March 2020, a rent statement and a Notice under Section 11 of the Homelessness etc. (Scotland) Act with accompanying email to Perth and Kinross Council dated 15 July 2020.
3. Ms Caldwell moved the Tribunal to grant an order for eviction under Section 33 of the Housing (Scotland) Act 1988. She submitted the Short Assured Tenancy ("the tenancy") between the parties had reached its end and referred the Tribunal to the Notice to Quit and the Notice under Section 33 of the Housing (Scotland) Act 1988 dated 2 March 2020 addressed to the Respondent. The Tribunal noted that both notices gave two months' notice to the Respondent and requested the Respondent to vacate the Property by 12 June 2020, which tied up with the end date.

4. There was some debate between the Tribunal and Ms Caldwell as to whether she required to make additional submissions with regard to reasonableness under the Coronavirus (Scotland) Act 2020 ("the 2020 Act"). Ms Caldwell requested a short adjournment to check whether she required to do so.

5. After the adjournment Ms Caldwell submitted that she did not require to satisfy the Tribunal on the reasonableness of making such an order. She referred to the wording of the amendments to Section 33 of the Housing (Scotland) Act 1988 made under the 2020 Act. Under Schedule 1, paragraph 3 (1) of the 2020 Act she submitted that as the Notice to Quit and Section 33 Notice had been served prior to the 2020 Act coming into force on 7 April 2020 the proceedings were not affected by the changes to Section 33 of the 1988 Act under Schedule 1, paragraph 3 (4). Accordingly she was not required to make submissions on reasonableness. The Tribunal requested that she do so in any event as they wished to consider the submissions made in relation to the 2020 Act. Ms Caldwell submitted that the Respondent was in employment. Arrears had now increased to £3560 from £2300 when the Application had been made. The Respondent had sent abusive messages to the letting agent and the Landlord when they had texted her. She had refused access for repairs and had defaulted in payment plans.

Findings in Fact

6. The Applicants let the Property to the Respondent under a Short Assured Tenancy dated 11 December 2016 with a termination date of 12 June 2017. The tenancy continued on a bi-monthly basis thereafter.

7. On 2 March 2020 the Applicants served on the Respondent a Notice to Quit terminating the tenancy on 12 June 2020. The Applicants also served a Notice in terms of Section 33 of the Housing (Scotland) Act 1988 indicating the Applicant intended to take possession of the Property on 12 June 2020. Both notices were served on the Respondent by Sheriff Officers on 5 March 2020.

8. A Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 was served on Perth and Kinross Council on 15 July 2020.

Reasons for Decision

9. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made on behalf of the Applicants. The Tribunal concluded that the Applicants were entitled to seek repossession of the Property under Section 33 of the Housing (Scotland) Act 1988. There was a properly constituted Short Assured Tenancy with the Respondent. The Tribunal was satisfied that the statutory provisions of Section 33 of the Housing (Scotland) Act 1988 had been met namely that the Short Assured

Tenancy had reached its ish (termination date);the Notice to Quit brought the contractual Short Assured Tenancy to an end on 12 June 2020; and that the Applicants had given the Respondent at least 2 months' notice in terms of Section 33(1) (d) of the Housing (Scotland) Act 1988 stating that possession of the property was required on 12 June 2020.

10. The terms of Section 33 of the Housing (Scotland) Act 1988 would entitle the Applicants to a right of mandatory repossession of the Property. The Tribunal is satisfied that the submissions made by Miss Caldwell are correct with regard to the provisions of Schedule 1 of the Coronavirus (Scotland) Act 2020 which the Tribunal accept do not apply in the current case as the requisite notices were served prior to the 2020 Act coming into force. Accordingly the Tribunal is satisfied the test of reasonableness post the 2020 Act coming into force on 7 April 2020 does not apply to these proceedings. In any event even if they had applied, the Tribunal is satisfied that it would be reasonable to grant the order to evict. The Tribunal found the Applicants were entitled to an order for possession of the Property.

Decision

11. The Tribunal granted an order for possession of the Property.

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.

Shirley Evans

30 September 2020

Legal Member/Chair

Date