



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/22/4411

Property: 62 Loch Awe, East Kilbride G74 2EW ("Property")

Parties:

McBride Properties, PO Box 26491, Glasgow G74 9DA ("Applicant")

Donald MacLellan 62 Loch Awe, East Kilbride G74 2EW ("Respondent")

Tribunal Members:

Joan Devine (Legal Member)

Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("Tribunal") determined that an order for possession of the Property should be made.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: Short Assured Tenancy Agreement dated 28 September 2012; AT5 dated 28 September 2012; Notice to Quit and Notice in terms of section 33 of the Housing (Scotland) Act 1988 ("1988 Act") both dated 5 September 2022 addressed to the Respondent; sheriff officer's certificate of service of the Notice to Quit and section 33 Notice on 21 September 2022; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 6 December 2022; and certificate of service by Sheriff Officer evidencing service of the Application on the Respondent on 2 February 2023.

Case Management Discussion ("CMD")

A CMD took place on 7 March 2023 at 2pm by conference call. Both the Applicant and the Respondent were in attendance. The Tribunal noted that it had no queries to raise regarding the notices served. The tribunal did however require to be addressed on the question of reasonableness.

The Respondent told the Tribunal that he did not oppose the application. He said that he had been in touch with South Lanarkshire Council who had told him not to give up his tenancy and to allow the Tribunal process to be completed. He said that the Property was a one bedroom property and that he lived there alone although his daughters aged 9 and 12 visited every weekend. He said he hoped to be housed in a 2 bedroom council house.

Ms McBride told the Tribunal that the Applicant owned 17 properties but they are reducing their portfolio as they want to leave the rental market. She said that the Applicant could no longer afford to run the Property. She said that part of the rent was paid via universal credit but it did not cover the mortgage on the Property. She said the arrears were around £4000. Ms McBride said that the Applicant could not afford to continue to run their properties at a loss. She said that they had already been through a bankruptcy and had another 2 or 3 jobs to sustain them.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement dated 28 September 2012.
2. The Applicant had signed the form AT5 on 28 September 2012.
3. Clause 26.1 of the Tenancy Agreement narrated that the Respondent acknowledged receipt of the form AT5 before creation of the tenancy.
4. The tenancy was for the period 28 September 2012 to 27 March 2013 and month to month thereafter.
5. A Notice to Quit dated 5 September 2022 was served on the Respondent on 21 September 2022 stating that the tenancy would terminate on 27 November 2022.
6. A Notice in terms of Section 33 of the 1988 Act dated 5 September 2022 was served on the Respondent on 21 September 2022 stating that possession of the property was required on 27 November 2022.
7. The tenancy reached its *ish* on 27 November 2022 and is not continuing by tacit relocation.
8. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003.

Reasons for the Decision

The Tribunal determined to make an Order for possession of the Property in terms of Section 33 of the 1988 Act. The Tribunal noted that the tenancy had been properly created as a short assured tenancy. The Tribunal noted that a Section 33 Notice and Notice to Quit had been served on the Respondent giving two months' notice that the Applicant required possession of the Property in order to sell. Having considered all of the circumstances, and in particular the statement from the Respondent that he did not oppose the application, the Tribunal determined that it was reasonable to issue an eviction order.

Decision

The Tribunal grants 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.

Legal Member

Date: 7 March 2023