



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/22/0805

Re: Property at 3 Sark Drive, Troon, Ayrshire, KA10 7JG (“the Property”)

Parties:

Mrs Fiona Reese, 58 Behind Berry, Somerton, Somerset, TA11 6JY (“the Applicant”)

Ms Kirsty Shelley, 3 Sark Drive, Troon, Ayrshire, KA10 7JG (“the Respondent”)

Ms H Forbes (Legal Member) and Ms E Munroe (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted.

Background

1. This is an application dated 18th March 2022 and made in terms of Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (‘the Rules’). The Applicant is the landlord of the Property, and the Respondent is the tenant, in terms of a short assured tenancy agreement that commenced on 15th November 2016. The Applicant is seeking an order for possession.
2. The Applicant lodged a copy of the tenancy agreement, a Form AT5, a Notice to Quit and section 33 Notice dated 3rd and served on 6th September 2021 and requiring the Respondent to remove by 16th March 2022, with evidence of service, and a section 11 notice to the local authority with evidence of service.
3. A Case Management Discussion took place on 20th June 2022. The Applicant was in attendance. The Respondent was not in attendance and was represented by Mr Gerard Tierney, Advocacy and Tribunal Officer, Ayr Housing Aid Centre.
4. The Applicant moved the Tribunal to grant the order for possession, as she requires to sell the Property for financial reasons.
5. The Respondent’s position, as put forward by Mr Tierney, was that she had accepted a new-build property from a social housing provider which was

expected to be completed on 27th July 2022, with the keys available around 7 to 10 days later. The Respondent lives with her 13 and 17 year old daughters.

6. The Tribunal was satisfied that the contractual tenancy had come to an end, and that the only matter before it was reasonableness. The Tribunal considered there was a lack of evidence before it of the Applicant's financial position and the requirement to sell the Property. There was also disagreement in relation to the Applicant's motivation for selling the Property. The Tribunal took into account that the Respondent is continuing to pay the rent. The Tribunal was concerned that entry to the new-build may be delayed further if there are any snagging or other building-related issues, and that, if the order was granted, even if execution was delayed, this could lead to a period whereby the Respondent and her family may have to be housed in temporary accommodation before the new property is ready. The Tribunal decided to continue the case to an evidential hearing on reasonableness.
7. By email dated 27th July 2022, Mr Tierney provided information to the Tribunal from the social housing provider stating that they were working towards a date of 10th August for handover of the new property and they would be looking to have a tenancy commence around 10th to 17th August 2022.
8. By email dated 24th August 2022, Mr Tierney provided to the Tribunal a copy of an email sent to the Applicant which stated that the Respondent was given the keys to her property on 18th August 2022, that she had notified the Applicant that the keys to the Property would be returned on 14th September 2022, and asking whether the Tribunal hearing set down for 30th August 2022 would be necessary.
9. By email dated 30th August 2022, Mr Tierney provided to the Tribunal a screenshot from the social housing provider showing that the Respondent's new tenancy commenced on 17th August 2022.

The Hearing

10. A hearing took place by telephone conference on 30th August 2022. The Applicant was in attendance. The Respondent was not in attendance and was represented by Mr Gerard Tierney.

The Applicant's position

11. The Applicant moved the Tribunal to grant the order sought, notwithstanding the fact that the Respondent now has another tenancy. The Applicant said she had not received notice that the tenancy of the Property was to end. There had been some correspondence received but August was a difficult month for her, with patchy Wi-Fi and it had not always been possible to respond to correspondence. She had heard nothing from the Respondent and felt it was irrelevant whether the Respondent had another tenancy or not. The Applicant said she had been unable to market the Property or get into it and she wanted it back.

12. Responding to questions from the Tribunal, the Applicant said she had received the email of 24th August 2022 from Mr Tierney, but she felt it was immaterial. The Applicant said she wished an order even if the appeal period would take it beyond the date stated by the Respondent for handing back the keys. The position now was much the same as two months ago, with changing dates. The Respondent is now in a position to move out and has not done so. She would not enforce the eviction order if the Respondent moves out as planned.
13. Responding to questions on reasonableness, the Applicant said it was not reasonable for her to have to produce details of her financial position. Mortgage Tax Relief has now gone. Interest rates are soaring and everything has changed in her business model. She had three properties to let, including a former family home. She now has only the Property, having sold a property in February.

The Respondent's position

14. Mr Tierney said the Respondent could not be present as she is supervising works at the new property. It was his position that an order for possession was unnecessary as the Respondent was undertaking to return the keys on 14th September 2022. Mr Tierney said if the Tribunal felt it necessary to make an order, he would make a motion that execution be delayed for an additional month to allow matters to be finalised. This would be a backstop position. Following questions from the Tribunal, Mr Tierney withdrew that motion and reiterated that an order was not necessary.
15. Mr Tierney said he had written to the Applicant on 24th August 2022 to ask whether the hearing was necessary and had received no response. The Respondent had paid her rent on 14th August 2022 to keep things right and not to delay matters.

Findings in Fact and Law

- 16.
- (i) Parties entered into a short assured tenancy agreement in respect of the Property that commenced on 15th November 2016.
 - (ii) Notice to Quit and Section 33 Notice dated 3rd September 2021 was served on the Respondent requiring the Respondent to remove by 16th March 2022
 - (iii) The short assured tenancy has reached its ish date.
 - (iv) The contractual tenancy terminated on 16th March 2022.
 - (v) Tacit relocation is not in operation.

- (vi) The Applicant has given the Respondent notice that they require possession of the Property.
- (vii) It is reasonable to grant the order for possession.

Reasons for Decision

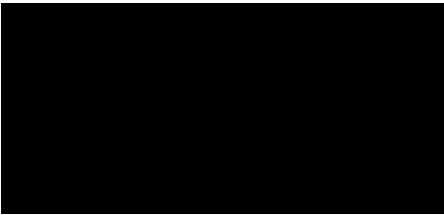
17. Section 33 of the Act provides that the Tribunal may make an order for possession if satisfied that the short assured tenancy has reached its finish, tacit relocation is not operating, the landlord has given notice to the tenant that they require possession, and it is reasonable to make the order. The contractual tenancy has been terminated and tacit relocation is not in operation. The Applicant has given the Respondent notice that they require possession of the Property.
18. In considering reasonableness, the Tribunal took into account the representations made. The Tribunal did not accept the position of the Applicant that nothing has changed in the two months since the last CMD. Much has changed. The Respondent now has a new property with security of tenure.
19. The Tribunal was concerned that, although the Respondent has secured another property, she has delayed moving out of the Property for a further month. The Tribunal was concerned at the motion made on behalf of the Respondent to delay execution of any order for a further month beyond the usual 30 day appeal period, albeit the motion was withdrawn. It tended to suggest that the Respondent is not entirely certain that she will be ready to leave the Property on 14th September 2022. It would not be reasonable for her tenancy of the Property to continue any longer than is absolutely necessary.
20. The Tribunal took into account the representations made by the Applicant concerning her desire to leave the letting business, and the current financial situation in respect of mortgage relief and interest rates. The Tribunal also took into account that the Respondent has had a considerable period of notice of the Applicant's intention to sell the Property.
21. In all the circumstances, the Tribunal considered it reasonable to grant the order.

Decision

22. An order for possession of the Property is granted in favour of the Applicant under section 33 of the Housing (Scotland) Act 1988, the order not to be executed prior to 12 noon on 3rd October 2022.

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

30th August 2022
Date