



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/20/0458

Re: Property at 8 Faskine Avenue, Cairnhill, Airdrie, ML6 9DX (“the Property”)

Parties:

Mr James Dolan, c/o Morison and Smith Solicitors, 39 High Street, Carluke, ML8 4AL (“the Applicant”)

Mr Peter Mark Timoney and Mrs Laura Timoney, 8 Faskine Avenue, Cairnhill, Airdrie, ML6 9DX (“the Respondents”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision

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 Applicant 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 10 February 2020, the Applicant’s 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 8 Faskine

Avenue, Cairnhill, Airdrie, ML6 9DX (“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 20 October 2017, AT5s also signed and dated 20 October 2017, a Notice to Quit and a Section 33 Notice both dated 16 August 2019 together with a Recorded Delivery slip and a Track and Trace receipt dated 17 August 2019 and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 with accompanying email to North Lanarkshire Council dated 10 February 2020.
3. On 24 February 2020, the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. A Case Management Discussion was due to proceed on 26 March 2020 but discharged due to the COVID 19 pandemic. On 23 June 2020, the Tribunal enclosed a copy of the application and advised parties on 23 June 2020 that a Case Management Discussion under Rule 17 of the Regulations would proceed on 14 July 2020. This paperwork was served on the Respondent by way of Recorded Delivery letter and the proof of service from the Royal Mail Track and Trace Service was received by the Tribunal administration.

Case Management Discussion

5. The Tribunal proceeded with the Case Management Discussion on 14 July 2020 by way of teleconference. The Applicant was represented by Mr de Ste Croix, from Messrs Harper MacLeod as agents for the Applicant’s solicitors Messrs Morison and Smith. The Second named Respondent Mrs Laura Timoney represented herself and her husband Mr Peter Timoney. Mr Dolan the Applicant was on Observer.
6. The Tribunal had before it a Short Assured Tenancy Agreement between the Applicant and the Respondents signed and dated 20 October 2017, the AT5 signed and dated 20 October 2017, a Notice to Quit dated 16 August 2019 and a Notice under Section 33 of the Housing (Scotland) Act 1988 also dated 16 August 2019 with a Recorded Delivery slip dated 16 August 2019 and a Royal Mail Track and Trace receipt dated 17 August 2019 and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to North Lanarkshire Council dated 20 February 2020. The Tribunal also had a List of Additional Documents submitted by the Applicant comprising correspondence

between the Applicant's solicitors and the Respondents from 20 March 2019, file notes of telephone calls between the solicitors and Mrs Timoney, text messages between the parties, a letter from the Department of Work and Pensions, a letter from the Scottish Public Pensions Agency and a tenancy agreement between Mark Costello and the Applicant. Mr Dolan had also separately lodged a Rent Statement and a letter to the Tribunal dated 1 July 2020.

7. Before proceeding with the Case Management Discussion the Tribunal checked with both parties that they had all the documents and were happy to proceed. Both parties confirmed they were ready to proceed and that they both understood the procedure and felt able to fully participate in the teleconference call.
8. Mr de Ste Croix moved the Tribunal to grant an order for eviction under Section 33 of the Housing (Scotland) Act 1988 without the need for an evidential hearing. He submitted that with reference to the documents before the Tribunal all the statutory requirements under Section 33 of the Housing (Scotland) Act 1988 had been met. He submitted that he had additional submissions to make with regard to reasonableness as required under the Coronavirus (Scotland) Act 2020.
9. He 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 16 August 2019 addressed to the Respondents. Both notices gave two months' notice to the Respondents and requested the Respondents to vacate the Property by 19 October 2019, which tied up with the end date. He also confirmed that no other contractual tenancy was in existence and that if it were not for the current COVID crisis he would be entitled to an order for possession.
10. Mrs Timoney in response stated she had nothing to add.
11. Mr de Ste Croix then made submissions on reasonableness of such an order being granted as required under Schedule 1 of the Coronavirus (Scotland) Act 2020. He submitted that it was reasonable to for an order for possession to be made. He submitted that the Applicant was in ill health and was wheelchair bound. He had moved in with his father, but that accommodation was on two levels and was unsuitable. He had sought help from the Council but had required to source a private let which he could not afford. The Applicant had a cogent need for the Property due primarily for health reasons. There were arrears of rent of £7478.79 as shown in the rent statement. He submitted that the conduct of the Applicant throughout was measured as shown in the

correspondence lodged in the additional List of Documents. The Applicant had at one time been prepared to write off the arrears and had always been willing to negotiate with the Respondents as to when they could vacate the Property. On 16 May 2019 Mrs Timoney had advised the Applicant's solicitor that they expected to move out in the next 4-6 weeks. Despite that there had been no indication from the Respondents as to when they would actually move. In essence his submission was that it was reasonable for an order to be granted due the Applicant's own health and financial needs.

12. In response Mrs Timoney candidly stated that she did not dispute anything that had been said by Mr de Ste Croix. The Property was not ideal and her husband had suffered a stroke and had his own health issues. The Respondents had sought help from the Council and were desperately trying to find alternative accommodation. She was keen to know effectively how long they had to live in the Property as she understood they would have to leave.

Findings in Fact

1. The Applicant is the heritable proprietors of the Property. The Respondents are the tenants of the Property and continue to reside there having failed to vacate on 19 October 2019.
2. The Applicant let the Property to the Respondents under a Short Assured Tenancy dated 20 October 2017 with a termination date of 19 April 2019. The tenancy continued on a monthly basis thereafter.
3. On 16 August 2019 by way of Recorded Delivery post the Applicant served on the Respondents a Notice to Quit terminating the tenancy on 19 October 2019.
4. On 16 August 2019 by way of Recorded Delivery post the Applicant served on the Respondents a Notice in terms of Section 33 of the Housing (Scotland) Act 1988 indicating the Applicant intended to take possession of the Property on 19 October 2019.
5. There was no other contractual tenancy in existence between the parties.
6. The Respondents continue to live in the Property and have incurred arrears of rent of £7478.79.
7. The Applicant has health issues and is confined to a wheelchair. The Applicant requires possession of the Property to live in.
8. The Applicant currently resides in another property which he struggles to afford financially.

9. A Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 was served on North Lanarkshire Council on 10 February 2020.

Reasons for Decision

1. The Tribunal considered the issues set out in the application. Further the Tribunal considered the submissions made on behalf of both parties. The Tribunal concluded that the Applicant was 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 Respondents. The Tribunal was satisfied that the statutory provisions of Section 33 of the Housing (Scotland) Act 1988 had been met which would normally entitle the Applicant to repossess the Property namely that the Short Assured Tenancy had reached its end (termination date) on 19 April 2018; the Notice to Quit brought the contractual Short Assured Tenancy to an end on 19 October 2019; no further contractual tenancy was in existence; and that the Applicant had given the Respondents 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 19 October 2019.
2. The terms of Section 33 of the Housing (Scotland) Act 1988 would normally entitle the Applicant to a right of mandatory repossession of the Property. However, the provisions of Schedule 1 of the Coronavirus (Scotland) Act 2020 introduced a test of reasonableness to Section 33 of the 1988 Act. Accordingly, due to the amendment the Tribunal may make an order for possession where it is satisfied that the statutory terms of Section 33 of the Housing (Scotland) Act 1988 had been met and that it was reasonable to make an order for possession.
3. The Tribunal considered the submissions of the Applicant's solicitor, which very clearly, in the opinion of the Tribunal showed that the Applicant had an overwhelming need due to his medical condition to live in the Property. The Tribunal also considered the financial pressure the Applicant was under and that he had acted reasonably throughout in his dealings with the Respondents. The Tribunal also noted and appreciated the Respondents' position and that the Property was not entirely suitable for them. The Tribunal noted that the Respondents were seeking assistance from the Local Authority in obtaining suitable accommodation. The Tribunal appreciated the frankness and candour of Mrs Timoney who clearly appreciated they would have to leave the Property. On balance the Tribunal was of the opinion that all things considered, as well as the statutory requirements of Section 33 of the 1988 Act having been met, it was reasonable to grant the order and found that the Applicant was entitled to an order for possession of the Property.

Decision

4. 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
Legal Member**

14 July 2020