



**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/21/1427

Re: Property at 4 Firhill Avenue, Airdrie, ML6 9DY (“the Property”)

Parties:

**Mr Joseph Rennie, Mrs Roselea Rennie, Birnam Lodge, Woodburn Avenue,
Airdrie, ML6 9DT (“the Applicants”)**

Miss Marie Kimmins, 4 Firhill Avenue, Airdrie, ML6 9DY (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants were entitled to an order for possession of the property and the removal of the Respondent from the property.

Background

1. By application dated 14 June 2021 the Applicants’ representatives T C young, Solicitors, Glasgow applied to the Tribunal for an order for possession of the property under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Applicants’ representatives submitted a copy of a Tenancy agreement, Form AT5, Notice to Quit, Section 33 Notice, Recorded Delivery Receipt, Section 11 Notice and email to Local authority intimating Section 11 notice in support of the application.

2. By Notice of acceptance dated 25 June 2021 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. Intimation of the CMD was sent to the Applicants’ representatives by post and served on the Respondent by Sheriff Officers on 1 July 2021.
4. The Respondent submitted a written response dated 9 August 2021.
5. A CMD was held by teleconference on 10 August 2021. The Applicants did not attend but were represented by Ms Morrison of the Applicants’ representatives. The Respondent attended in person. The Respondent sought a continuation to allow her to seek legal advice. The Tribunal considered that it was appropriate to adjourn the proceedings to a full hearing of the Tribunal at which evidence could be led by both parties.
6. The Tribunal issued a written Direction to the parties requiring the Applicants to lodge documents not later than 27 August 2021 and the Respondent to lodge documents not later than 14 September 2021.
7. The Applicants’ representatives submitted documents in response to the Direction by email dated 27 August 2021 and they submitted further documents by email on 16 and 28 September 2021.
8. The Respondent failed to comply with the Tribunal’s written direction and did not provide a written statement clearly setting out why in her submission it would not be reasonable for the Tribunal to grant the order sought with particular reference to her own personal circumstances.

The Hearing

9. A hearing was held by teleconference on 28 September 2021. The Applicants attended in person and were represented by Ms Kirsty Donnelly of the Applicants’ representatives. The Respondent did not attend nor was she represented. As the Tribunal was satisfied that the Respondent was aware of the date and time of the hearing it determined to proceed in her absence.
10. The legal member of the Tribunal ascertained from Ms Donnelly that the parties had entered into a Short Assured Tenancy agreement that had commenced on 12 April 2012 and endured until 12 October 2012 and thereafter continued by tacit relocation for periods of six months at a rent of £450.00 per month.
11. The Tribunal noted that a Notice to Quit and Section 33 Notice had been sent by Recorded Delivery post on the Respondent on 12 November 2020. Ms Donnelly submitted that proof of posting was sufficient and that the Respondent had not disputed that she had received the notices. The legal member

confirmed that he was aware from the Royal Mail Track and Trace system that package had been signed for and was shown as delivered.

12. Ms Donnelly confirmed that a Section 11 Notice had been sent to North Lanarkshire Council and referred the Tribunal to an email dated 14 June 2021.
13. Ms Donnelly submitted that it was reasonable that the Tribunal grant the order sought as the Applicants mortgage term had ended and they required to sell the property in order to fund the repayment of their mortgage. She referred the Tribunal to the correspondence from the Applicants' lenders in this regard. Ms Donnelly went on to say that the Applicants also had concerns about the condition of the property and referred the Tribunal to the photographs submitted. She also spoke of the rent arrears that had accrued and again referred to the productions submitted. She further explained that the Applicants gas engineer had issues gaining access to the property to carry out a gas safety check and again referred to the documents submitted. Finally, Ms Donnelly submitted that the stress of trying to recover possession of the property was having an adverse impact on Mrs Rennie's health.
14. The Tribunal queried whether it would be possible for the Applicants to remortgage their property. Mr Rennie explained that in 2012 he and his wife had known that the repayment date for the interest only part of their mortgage was coming. He explained they had already cashed in the endowment policy that had been taken out to repay the loan and the intention had been to use the increase in the value of the property to pay off the interest only part of the mortgage. However, at the moment because of the damage to the property its value has been reduced. He went on to explain that because the Applicants were approaching retirement, they did not want to take on a new loan at their age.
15. The legal member queried when the photographs of the property had been taken and Mr Rennie said they had been taken on 26 May 2021 when he had attended at the property with a surveyor to prepare a home report.
16. Ms Donnelly submitted that it was reasonable in the circumstances that the order be granted.

Findings in Fact

17. The parties entered into a Short Assured Tenancy agreement that commenced on 12 April 2012 until 12 October 2012 at a rent of £450.00 per month. The tenancy continued thereafter by tacit relocation for periods of six months.
18. The Applicants representatives sent a Notice to Quit and Section 33 Notice to the Respondent by Recorded Delivery Post on 12 November 2020 and these were delivered on 13 November 2020.

19. The Applicants' representatives sent a Section 11 Notice to North Lanarkshire Council by email on 14 June 2021.
20. The Applicants are required to repay an interest only secured loan over their home to Halifax Bank amounting to £30026.28 and this payment is now overdue.
21. There has been damage caused to doors and walls at the property during the Respondent's period of occupancy at the property.
22. The Respondent has accrued rent arrears amounting to £1921.85 as at the end of August 2021.
23. The Applicants have experienced difficulty with trades persons gaining access to the property to carry out works including a gas safety inspection.
24. The Applicants received a complaint from North Lanarkshire Council with regards to waste items left in the garden of the property.
25. The Respondent failed to comply with the written direction of the Tribunal dated 10 August 2021.

Reasons for Decision

26. The Tribunal was satisfied that there was a Short Assured Tenancy agreement in place between the parties and that proper notice had been served on the Respondent by the Applicants' representatives to bring the tenancy to an end. Were it not for the provisions of the Coronavirus (Scotland) Act 2020 ("the 2020 Act") the Tribunal would have, on being satisfied that the Applicants representatives had followed the correct procedures to terminate the tenancy, granted the order sought without further enquiry. However, because of the terms of the 2020 Act and whilst it remains in force the Tribunal must consider whether it is reasonable in the circumstances to grant the order.
27. The Tribunal issued a Direction to both parties in order that it would have more information before it at the hearing. In particular it wished information from the Respondent with regards to her personal circumstances. Despite being given the opportunity to seek legal advice and to make written submissions in this regard the Respondent failed to comply with the Tribunal's direction.
28. The Tribunal was satisfied that the Applicants had shown there was a financial need to recover possession of the property in order that they could sell it to repay the standard security over their home. The Tribunal accepted that as the Applicants were approaching retirement it would not be reasonable to expect them to try to take out a further mortgage on their property.

29. The Tribunal noted from the photographs submitted that it appeared that some damage had been caused at the property and accepted that this would have an adverse effect on its value or would require refurbishment. In the balance of probabilities, it was likely the damage had been caused by the Respondent or others known to the Respondent.
30. The Tribunal accepted that there was a shortfall between the amount paid to the Applicants by way of Housing Benefit and payments made by the Respondent that had resulted in arrears of £1921.85 being due by the Respondent at the end of August 2021.
31. The Tribunal has taken account of all the written and oral submissions made on behalf of the Applicants. The Respondent had previously been given time not only to seek legal advice but also directed to submit a written statement setting out her submissions as to why it would not be reasonable for the Tribunal to grant the order sought. The Respondent failed to comply with the Direction and failed to attend the hearing. The Tribunal has therefore limited information from the Respondent to consider. In her previous written submission the Respondent disputed that she had prevented workmen gaining access and that furniture deposited outside was as the result of the council refuse facilities being closed due to the Coronavirus pandemic. The Respondent also made reference to other issues regarding repairs to her shower and a neighbour's hedge. The Tribunal has taken account of this information in reaching its decision.
32. The Tribunal was satisfied that the Applicants had shown a significant financial need to gain possession of the property. The repayment of the interest only part of their mortgage is now overdue and there could well be significant legal consequences for them if they do not repay that part of the loan to their lenders. As it appears they are approaching retirement it would not be reasonable to expect them to take out a further mortgage on the property even if that was possible. Furthermore, the Respondent continues to accrue rent arrears due to the shortfall between her housing benefit payments and the actual rent due. It also appears that the Respondent has caused damage to the property that appears to be more than fair wear and tear. The Tribunal previously gave the Respondent an opportunity to seek legal advice and to submit written representations on reasonableness. The Respondent failed to submit a response to the Tribunal's Direction and failed to attend the hearing.
33. Taking everything into account the Tribunal was satisfied in all the circumstances that it was reasonable to grant the order sought.

Decision

34. The Tribunal finds the Applicants entitled to 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.

Graham Harding

**Graham Harding
Legal Member/Chair**

**28 September 2021
Date**