



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/21/1521

Re: Property at Newington South Cottage, Holywood, Dumfries, DG2 0RA (“the Property”)

Parties:

The Cowhill Trust, 28 Castle Street, Dumfries, DG1 1DG (“the Applicant”)

Mr David Glendinning, Newington South Cottage, Holywood, Dumfries, DG2 0RA (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it would make an order for possession of the short assured tenancy.

Background

1. An application was received under rule 66 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a short assured tenancy by the Applicants against the Respondent for the property.
2. The application contained:-

- a. a copy of the tenancy agreement
 - b. AT5 Notice
 - c. section 33 notice
 - d. notice to quit
 - e. recorded delivery slip
 - f. section 11 notice and evidence of service
 - g. a copy of the Respondent's rent statement
3. The Applicants' representative Mr Turnbull from Messrs Gillespie, Gifford and Brown LLP appeared on behalf of the Applicant. There was no attendance by the respondent or his wife, who had previously appeared as the respondent's representative.
4. This case had previously called 23 August 2021 and reference is made to the case management discussion note. The case had been continued on that date for the following matters to be addressed:
- a. For the respondent to make 3 payments to rent (August, September and October)
 - b. For the respondent to make 3 payments towards the arrears.
 - c. For the respondent to contact Dumfries and Galloway Council Homeless team and take advice and support offered by them
 - d. For the respondent to seek advice from a council officer or other suitably qualified professional to obtain a benefits assessment and ensure that their income is maximised
 - e. For the respondents to complete a time to pay application and to provide a copy of it to the tribunal and to the applicant's agent with the repayment offer confirmed in it
 - f. For the applicant's agent to seek instructions on the offer to repay the arrears once the offer is provided to him from Mrs Glendinning.

5. The parties had been informed of the date of this case management discussion. The time of the case management discussion had been altered from 10 until 11 am on 17 December 2021. The parties had been notified of this change by email on 17 December 2021. The tribunal clerk had however opened the telephone line at 10am in case parties called in at the original time. No one had called in at 10am. Mr Turnbull advised the Tribunal that he had in fact spoken with Mrs Glendinning at around 10.30am that morning (20 December), she had asked him what was happening with the proceedings, and he had confirmed to her that the case was calling at 11a.m. He advised that she had appeared to indicate that she had not been aware of the change in the time of the case management discussion taking place but did not say that she would not be attending at 11am. Further, while Mr Turnbull was in attendance at the case management discussion, he advised that his secretary had just taken a call from Mrs Glendinning. She had advised that she was going to a doctor's appointment and would not be taking part in the proceedings.
6. Given that the respondent and his representative did not dial into the hearing at 10am or 11am; and further had not contacted the tribunal to advise that they could not attend the hearing at 11am as the representative had had a doctor's appointment; and as this case management discussion had already been adjourned at the request of the respondent in October; the tribunal determined that it would fair, reasonable and in the interests of justice to continue with today's case management discussion.

Case Management Discussion

7. The applicant's agent advised that he was seeking an order for eviction and a payment order today. He advised that that the ground of eviction was section 33 of the Housing (Scotland) Act 1988, termination of a short assured tenancy.

8. The agent had previously advised that the tenancy had reached its ish date and had terminated on 14 June 2021. A section 33 notice had been served on the respondent. Evidence of service had been provided. In addition, an AT6 Notice had also been served in relation to the non-payment of rent. The agent confirmed that there had been a history of rent arrears by the respondent. Initially, the rent arrears had been more sporadic with part payment of rent being made, however from March 2020 rent payments had stopped altogether. On 23 August 2021 the agent advised that the rent arrears had increased from the date of the application and totalled £9,787.95.
9. He had also advised that Savills, the Land Agents, had sought to engage with the respondent over a number of years, however this had been unsuccessful. Mr Glendinning had not engaged, and the arrears had increased. He advised that he had been in touch with the Homeless Officer at Dumfries and Galloway Council, she had also been trying to engage with Mr Glendinning about the eviction application however, again there had been no contact from Mr Glendinning and they had now closed their file.
10. He was unaware if ill-health had been a reason for the no-payment of the rent, he had understood that Mr Glendinning was a self-employed labourer. There were only two people living in the property, Mr and Mrs Glendinning. There were significant rent arrears and the last payment to rent was made in March 2020.
11. Today, he advised that advised that the current arrears were £10,045.95. Since the first case management discussion the respondent had made three payments to the rent, albeit the December payment had not yet been made. He advised however that the offer which had been made by Mrs Glendinning to repay the arrears at £300 per month had not been adhered to. He advised that since the case called in August there had only been one payment to the arrears of £150 this had been made on 27 August 2021. There had been no other payments made.

12. He advised that the applicants had tried to engage with the respondents about the rent arrears and he had lodged three copy letters, which he sent to the respondent about the arrears. He had not received any response from the respondent until last week, when Mrs Glendinning had contacted him. He advised that she had told him that both her and her husband were now in receipt of state pension and her husband also worked on an *ad hoc* basis. Mrs Glendinning suggested that they were able to make the payments towards the arrears.

13. He advised that his clients were not prepared to accept the offer to repay the arrears at £150 even if it had been adhered to, as it would have taken 67 months to repay. Further, he advised that given the history of the sporadic payments towards rent and more recently towards arrears, the applicants did not believe that any repayment arrangement would be adhered to, and they therefore sought an order for eviction.

14. He advised that the applicants were a commercial trust; however, they were connected to a charitable trust called the Eda Keswick Memorial Trust. That trust had properties in the same locale at the tenancy and the land agents had contacted the respondent and offered them alternative accommodation with that trust. This had however been refused by the respondents.

Findings in Fact

15. The tribunal found the following facts established:-

16. That there was a tenancy agreement between the Applicant and the Respondent in respect of the property.

17. That it had commenced on 15 July 2008 until 14 July 2009. The agreement was for an initial period of 12 months, and it renewed on a monthly basis thereafter.

18. The tenancy agreement had been signed by the parties on 9 July 2008.
19. The AT5 Form was in the prescribed format and there was evidence that it had been given to the Respondent prior to the creation of the tenancy agreement.
20. The notice to quit notice contained the prescribed information, was dated 18 November 2020, it sought vacant possession as of 14 June 2021.
21. The section 33 notice contained the prescribed information, was dated 19 November 2020, it sought vacant possession as of 14 June 2021.
22. There appeared to be evidence of service for both notices on the Respondent.
23. A section 11 notice appeared to have been served on the local authority.
24. Rent arrears outstanding were £10,045.95 as of 20 December 2021.

Reasons for Decision

25. Section 33 of the 1988 Act (as amended by the Coronavirus (Scotland) Act 2020) provides that the tribunal may grant an order for possession under a short assured tenancy, where the tenancy has reached its end; tacit relocation is not operating; the landlord has given notice to the tenant that they require possession of the house; and that it is reasonable to do so.
26. The tribunal was satisfied that a short-assured tenancy had been created. We were also satisfied with the terms of the section 33 notice and the notice to quit; and that these notices had been served on the Respondent.
27. Having regard to the issue of whether it was reasonable to make an order for possession, it was not disputed by the respondent that he owed the rent. When the respondent's wife appeared, as his representative, she had made an

offer to repay the arrears at £300 per month. The respondent however had not adhered to that offer; and since 23 August 2021 they had made only one payment towards the arrears of £150. They had failed to make any contact with the applicant's agent to discuss the non-payment of the arrears, other than the telephone call the previous week. It also did not appear that there had been any effort to submit the time to pay application. The tribunal were unaware if the respondent had contacted the local authority to see if they could support or assist them in dealing with the rent arrears.

28. The arrears are now at a significant level and the tribunal considered that the applicant had already been reasonable and patient with the respondent regarding the seeking payment of the rent and arrears, however this patience had been to no avail. In addition, we note that the applicant had offered the respondent alternative accommodation, which may have which they may have found more affordable, but the respondent had refused this offer.

29. While we note that the respondent had made three payments towards the rent since the case last called, they had not adhered to their offer to repay the arrears. The arrears are significant and even if they were to repay them at the rate of £150 per month this would take over 5 years. The applicant's agent had attempted to contact the respondent about the arrears since the case last called, and as noted there had been very limited contact from the respondent or his wife. We understand that his wife had advised the agent that they were able to repay the arrears, but for whatever reason known to them they continued to fail to do so.

30. Given all of the above we were satisfied that the requirements of section 33 had been met and it would be reasonable to grant the order, we considered therefore that we should grant an order for eviction under section 33 of the Housing (Scotland) Act 1988.

Decision

31. We grant an order in favour of the Applicants against the Respondent for recovery of 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.

Melanie Barbour

Legal Member/Chair

29/12/2021
Date