



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/21/2558

Re: Property at 106 Patrickholm Avenue, Stonehouse, ML9 3JS (“the Property”)

Parties:

Mr Alistair Fulton, 94 Drygate Street, Larkhall, ML9 2DA (“the Applicant”)

Mr Scott McIntyre, 106 Patrickholm Avenue, Stonehouse, ML9 3JS (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. This is an application by the Applicant for an order for possession on termination of a short assured tenancy in terms of rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”). The tenancy in question was a Short Assured Tenancy of the Property by the Applicant to the Respondent commencing on 5 July 2017.
2. The application was dated 15 October 2021 and lodged with the Tribunal around that date.
3. The application relied upon a Notice to Quit and notice in terms of section 33 of the Housing (Scotland) Act 1988, both dated 12 February 2021, providing the Respondent with notice (respectively) that the Applicant sought to terminate the Short Assured Tenancy and have the Respondent vacate, each by 5 September 2021. Evidence of postage of the said notices by Recorded Delivery on 12

February 2021, and that they were signed for on 13 February 2021, was included with the application.

4. Evidence of a section 11 notice dated 15 October 2021 in terms of the Homelessness Etc. (Scotland) Act 2003 served upon South Lanarkshire Council was provided with the application.

The Hearing

5. On 21 December 2021 at 10:00, at a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting remotely by telephone conference call, we were addressed by the Applicant’s solicitor, Shabeilla Saddiq, TCH Law and by the Respondent himself.
6. Prior to the CMD, the Applicant’s agent had lodged an Inventory of emails and notes of contact between the Respondent and the Applicant’s letting agent. Shortly prior to the CMD, the Respondent sent in three documents: an email of submissions, a letter from a medical professional dated 18 August 2021, and an email of 3 September 2021 which was an acknowledgement from one of his MSPs regarding his request that she provide sought assistance from her office on rehousing. The email of submissions and letter from the medical professional were full of confidential medical information and the Tribunal sought the Respondent’s consent to the three documents being shared with the Applicant. No such consent was provided and the Respondent confirmed at the CMD that he did not consent to the contents being shared. This placed us in a difficulty in giving fully consideration to the Respondent’s position while being unable to discuss his position openly. We took the Respondent through what information he was willing to disclose to the Applicant and, with some prompting, he disclosed the following to the Applicant’s agent:
 - a. He has a medical condition. This has become worse over the last six months.
 - b. He lives at the Property with his daughter and a niece. Neither of them have medical conditions that he relied upon as relevant to his defence.
 - c. For around four years, he has shared care responsibilities for another of his nieces who has a medical condition. He shares the care responsibilities with his mother and father, who live within walking distance of the Property. He described them as “two minutes’ walk away”.
 - d. He also shares care responsibilities with his parents for two other nieces but neither of them have medical conditions that he relied upon as relevant to his defence.
 - e. He is happy to move out of the Property but only once he has secured alternative accommodation near to his parents. He says it necessary to live close to his parents both so he can provide ready assistance to them when they are caring for his niece, and so that they can provide ready assistance at his home if he himself takes unwell.
 - f. He does not have access to a car.
 - g. The Property is not adapted for any medical or accessibility reason.

7. In regard to further relevant information from the Respondent, he said that he applied for rehousing from South Lanarkshire Council many months ago; he thought it probably occurred around the time he received the notices regarding the eviction (which would have been February, though the Respondent also hazarded a guess that he had applied "six months prior to November"). He said that he had made regular contact with the Council since then but they had no update from him. In particular, he said that the Council denied having any suitable local properties available. The Respondent was aggrieved by this, as he said he knew of a suitable 3-bed property which he believed was owned by the Council and had been vacant for a year. When asked by us whether the Council had discussed with him housing under homelessness legislation, the Respondent disputed that the Council had discussed this with him but he also made reference to the Council encouraging him to not leave the Property and instead wait for this application to be raised. It thus appeared to us that his discussions with the Council have covered more than simply him asking for an update on his application and them telling him that there was no update.
8. The Respondent confirmed that he had made no attempt to see if there were any suitable private residential tenancies available as he did not want one, as he wanted only a "council house". We asked him if he was aware of any housing association homes available near his parents but he did not know and was not aware whether his application to the Council would also cover potential rehousing into a housing association property.
9. From the Applicant's Inventory, there had been some correspondence which suggested the Respondent was disputing the validity of the notices served on him. The Respondent confirmed to us that he did not now dispute them and understood the papers served. He confirmed he had not sought advice from a solicitor, CAB or other adviser. He had written twice to both his MP and MSP and both had told him that they were looking into his case but he had no further update from them. He had not provided us with copies of their emails confirming this position so we do not know the dates of the last contact from the politicians.
10. The Applicant's position was that the notices were all valid and that it was reasonable to evict in the circumstances given the passage of time and the Respondent's failure to investigate all housing options (including a new private tenancy). Further, the Applicant was requiring to sell the Property to raise money from the asset, having now become unable to work due to a medical condition of his own. He lived with his partner but did not have any ownership interest in his partner's property nor in any other property other than the Property.
11. The Applicant and the Respondent were in agreement that the Respondent had made a recent payment of £150 towards arrears, and that arrears of rent currently stood at £400. (We noted that the monthly rent under the Tenancy agreement was £475.)
12. We canvassed with the parties their views on our power to grant an order for eviction suspended for a period. The Applicant opposed such a suspension, relying on the Applicant's need to realise the value of his asset. The Respondent confirmed that any suspension of eviction was welcome but, as he did not know

when he may be rehoused, he did not have a specific period of suspension to request.

13. In regard to further procedure, we asked both parties if they had any motion for a continuation for any purpose. Neither did and both were satisfied for us to make a decision on the information before us if we sought to do so.
14. No order for expenses was sought.

Findings in Fact

15. On 5 July 2017, the Applicant let the Property to the Respondent by lease with a start date of 5 July 2017 until 5 January 2018 to “continue thereafter on a monthly basis until terminated” (“the Tenancy”).
16. The Tenancy was a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988 further to the Applicant issuing the Respondent with a notice under section 32 of the 1988 Act (an “AT5”) on 5 July 2017, prior to commencement of the Tenancy.
17. On 12 February 2021, the Applicant’s letting agent drafted a Notice to Quit in correct form addressed to the Respondent, giving the Respondent notice that the Applicant wished him to quit the Property by 5 September 2021.
18. On 12 February 2021, the Applicant’s letting agent drafted a Section 33 Notice under the 1988 Act addressed to the Respondent, giving the Respondent notice that the Applicant required possession of the Property by 5 September 2021.
19. 5 September 2021 is an ish date of the Tenancy.
20. On 12 February 2021, the Applicant’s letting agent competently served each of the notices upon the Respondent by sending them by recorded delivery post. The Respondent was thus provided with sufficient notice of the Applicant’s intention that the Tenancy was to terminate on 5 September 2021.
21. On 15 October 2021, the notice period under the notices having expired, the Applicant raised proceedings for an order for possession with the Tribunal, under Rule 66, the grounds of which being that the Tenancy had reached its ish; that tacit relocation was not operating; that no further contractual tenancy was in existence; that notice had been provided that the Applicant required possession of the Property all in terms of section 33 of the 1988 Act; and that it was reasonable to make the order.
22. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon South Lanarkshire Council on or around 15 October 2021 on the Applicant’s behalf.

23. On 19 November 2021, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondent, providing the Respondent with sufficient notice of the CMD of 21 December 2021.
24. The Applicant seeks to sell the Property to raise money in consideration that he is no longer in employment.
25. The Applicant owns no other material assets other than the Property.
26. The Respondent lives with his daughter and a niece, and has shared care responsibilities for three further nieces.
27. The Respondent, and one niece for whom he has shared care responsibilities, have medical needs for which the Respondent's parents provide additional assistance when necessary.
28. The Respondent provides additional assistance to his parents in their care responsibilities to his nieces when necessary.
29. The Respondent's parents live a short walk from the Property.
30. The Respondent sought rehousing from South Lanarkshire Council during Spring 2021 but has not yet received an offer of rehousing.

Reasons for Decision

31. The application was in terms of rule 66, being an order for possession upon termination of a short assured tenancy. We were satisfied on the basis of the application and supporting papers that the necessary notices had been served with sufficient notice (in terms of the temporary amendment of the 1988 Act), the Respondent was extending no defence or dispute to the notices, and thus the requirements of the 1988 Act had been complied with.
32. We require, in terms of the 1988 Act as temporarily amended, to consider "that it is reasonable to make an order for possession". On this, we found the arguments finely balanced between the parties. The "reasonableness" test arises from the pandemic as it has only been introduced in the emergency legislation dealing with the current pandemic. Though we do not doubt there are unseen effects of the pandemic on the lives and needs of both the parties, their arguments on reasonableness were not tied to the public health situation. Instead, they arose from their respective medical and financial needs which, solely due to the emergency legislation, we now required to balance.
33. We did not doubt that the Respondent was finding his search for a council house to be protracted. We noted, however, that he was narrowing his search by seeking only public housing (and perhaps not even all public housing, as he was unaware whether there was any suitable housing association stock or whether he was being considered for it). In the circumstances before us, the Respondent has had over ten months' notice of the Applicant's intention and has made effort

to seek rehousing in a limited way. We were not satisfied that, given the Respondent's very specific desire to be rehoused in home of a certain size in a certain area but his failure to explore fully all potentially available accommodation, it was reasonable to refuse the application. We were, however, satisfied to suspend it until the end of winter, both in the hope that he may be rehoused by the end of that extended period but also to provide more time for him to look at all other options and make arrangements to move. In all the circumstances before us, we were satisfied that the application was well founded by the Applicant subject to a suspension of the order until noon on 21 March 2021.

34. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. We were thus satisfied to grant an order for possession with the said suspension.

Decision

35. In all the circumstances, we make the decision to grant an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988 but suspended for three months, so no eviction may be scheduled prior to 12:00 on 21 March 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.

Joel Conn

21 December 2021

Legal Member/Chair

Date