



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/22/0657

Re: Property at 7 Millgate Crescent, Caldercruix, Airdrie, ML6 7QY (“the Property”)

Parties:

Mrs Maggie Dudley, Mr John Cameron, 19 Flagstaff Walk, Plymouth, PL1 4SH (“the Applicant”)

Mr James Reid, Mrs Lynne Reid, 7 Millgate Crescent, Caldercruix, Airdrie, ML6 7QY; 6 Gilchrist Crescent, Whitburn, EH47 8NB (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Mike Scott (Ordinary Member)

Decision (in absence of the Second Named 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 Respondents from the property.

Background

1. By application dated 5 March 2022 the Applicants 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 submitted copies of a Notice to Quit, Section 33 Notice, Sheriff Officers Certificates of Execution, Tenancy Agreement, Form AT5, Section 11 Notice, and Letter of Engagement from solicitors confirming their appointment in the sale of the property in support of the application.
2. By Notice of Acceptance dated 12 April 2022 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 on 14 May 2022 and served by Sheriff Officers on the Respondents on 17 May 2022.

The Case Management Discussion

4. A CMD was held by teleconference on 23 June 2022. The Applicants attended in person as did Mr James Reid. Mrs Lynne Reid did not attend nor was she represented. The Tribunal being satisfied that proper intimation of the CMD had been given to her determined to proceed in her absence.
5. Mr Reid confirmed that the parties had entered into a Short Assured Tenancy that commenced on 4 July 2016 and had continued to 3 July 2017 and from month to month thereafter. He advised the Tribunal that the rent had initially been £525.00 per calendar month but was now £600.00. Mr Reid went on to say that he did not take any issue with the Notice to Quit and Section 33 Notice that had been served on him and agreed that the notices were valid. He explained that Mrs Reid no longer lived at the property having left four and a half years ago. He said that he had asked to be given a new tenancy agreement but that this had been refused as his wife's mother was a guarantor.
6. Mr Reid went on to say that he had approached North Lanarkshire Council following service of the Notice to Quit and the raising of the proceedings and had been advised to take matters to the Tribunal. He explained he had three children living with him, twin daughters aged 9 and a son aged 15. He said the twins stayed with their mother two nights per week. His son stayed with him all the time. Mr Reid confirmed it was his understanding that if the Tribunal granted an order for possession of the property, he would be given priority for being rehoused because of having three children. Mr Reid confirmed he was currently unemployed and in receipt of benefits and acting as unpaid carer for his sister.
7. For the Applicants Mrs Cameron explained that she and her husband had recently retired. It had always been their intention to sell their portfolio of properties to fund their retirement. She said they had sold two properties already and intended to wind down the remaining five properties over time but would keep four for income at present. She explained that they had chosen to sell the property as it would provide them with the capital they required and because the mortgage on it had come to an end and it was therefore a good time to sell rather than try to re-mortgage. Mrs Cameron accepted that if the order was not granted it would not leave them destitute but that she and her husband did wish to release some capital to properly fund their retirement. Mr Cameron explained that the Applicants property portfolio had been their pension fund and had been set up to be wound down once he and his wife retired to provide them with capital to live off in retirement.

Findings in Fact

8. The parties entered into a Short Assured Tenancy that commenced on 4 July 2016 and endured until 3 July 2017 and from month to month thereafter.

9. The rent was initially £525.00 per calendar month and is currently £600.00 per calendar month.
10. The Respondents were served with a Notice to Quit and Section 33 Notice by Sheriff Officers on 30 August 2021.
11. The notices provided that the Respondents should vacate the property by 3 March 2022.
12. The Second named Respondent, Mrs Lynne Reid no longer resides at the property and the Respondents are separated.
13. The Applicants sent a Section 11 notice to North Lanarkshire council on 5 March 2022.
14. The Respondent has three children living in the property with him, twin girls aged 9 and a son aged 15.
15. The Applicants have a portfolio of five let properties all subject to standard securities.
16. The Applicants have recently retired.
17. The Applicants wish to sell the property to realise capital to fund their retirement.
18. The Respondent has been unable to find alternative private let accommodation and been advised to remain in the property by North Lanarkshire Council to await the outcome of this application.

Reasons for Decision

19. The Tribunal was satisfied that there was a Short Assured tenancy in place and that the proper notices to bring the tenancy to an end in terms of Section 33 of the 1988 Act had been served on the Respondents. This was not disputed by Mr Reid. The Tribunal was also satisfied that proper intimation of the proceedings had been given to North Lanarkshire Council by way of a Section 11 Notice. Therefore, were it not for the provisions of the Coronavirus (Scotland) Act 2020 ("the 2020 Act") the Tribunal would have been obliged to grant the order sought without further consideration. However, the Tribunal was obliged in terms of the 2020 Act to consider whether in all the circumstances it would be reasonable to grant the order.
20. In considering reasonableness the Tribunal took account of the impact the granting of the order or the refusal to grant the order would have on the parties. The Tribunal acknowledged that given Mr Reid's lack of employment and dependency on benefits it would be difficult for him to obtain another private let. The Tribunal also accepted that he had to provide a home for his three school age children. However, it did appear to be his understanding that because of

having the three children he would receive priority to be re-housed by North Lanarkshire council if an order was granted.

21. The Tribunal also took account of the fact that when planning their retirement, the Applicants had decided to invest in a portfolio of properties and had purchased them all subject to mortgages with a view to realising their investment over time once they retired. Although refusing the order at this stage would not leave the Applicants destitute it would materially affect their retirement plans.
22. The Tribunal noted that the Second Respondent, Mrs Lynne Reid, had not participated in the proceedings but given that she was no longer resident in the property it was perhaps not surprising that she had not.
23. After carefully weighing up the arguments for both sides the Tribunal considered on balance that it was reasonable to grant the order as it appeared that Mr Reid would be given priority for housing by North Lanarkshire Council and it was reasonable that the Applicants should be able to realise capital to fund their retirement.

Decision

24. The Tribunal being satisfied that it had sufficient information before it to allow it to make a decision without the need for a hearing determined that the Applicants were entitled to an order for possession of the property in terms of Section 33 of the Housing (Scotland) Act 1988.

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
Legal Member/Chair

23 June 2022
Date