



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 66 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/22/0678

Re: 22 Anderson Crescent, Ayr, KA7 3RN ("the Property")

Parties:

David Hunter and Elaine Hunter residing at 20 Ronaldshay Crescent, FK3 9JH ('the Applicants and Landlords')

Norman Fraser, Solicitor, Wallace Hodge & Co Limited ('the Applicant's Representative')

Lisa Moseley residing at 22 Anderson Crescent, Ayr, KA7 3RN ('the Respondent and Tenant')

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal')

Tribunal Member: Jacqui Taylor (Legal Member) Helen Barclay (Ordinary Member)

Background

1. The Applicants applied to the Tribunal for eviction/ possession of the Rented Property under section 33 of the Housing (Scotland) Act 1988, in terms of Rule 66 of the Procedure Rules. The application was dated 4th March 2022. The application states:

'Termination of short assured tenancy under section 33 of the Housing (Scotland) Act 1988 by virtue of notice to quit and section 33 notice served on the tenant.'

2. Documents lodged with the Tribunal were:-

2.1 The Tenancy Agreement dated 26th and 27th September 2013.

2.2 Form AT5 dated 26th September 2013.

2.3 Section 33 Notice dated 5th August 2021.

2.3A A copy of the Notice to Quit dated 5th August 2021 giving the Tenant formal notice to quit the Property by 26th February 2022.

2.4 Certificate of execution of Notice to Quit by David Orr, Sheriff Officer dated 9th August 2021 confirming that he had served the Notice to Quit and section 33 notice on Lisa Moseley on 9th August 2021.

2.5 Section 11 Notice addressed to South Ayrshire Council

3. Case Management Discussion

This case called for a Case Management Discussion (CMD) Conference call at 10.00 on 7th June 2022.

The Applicants did not attend but their representative Norman Fraser, solicitor attended on their behalf.

The Respondent attended.

4. The Tribunal identified with the Applicants' representative and the Respondent the following agreed facts:

4.1 The Applicants are Landlords of the Property. They are owners of the Property and their title is registered in the Land Register of Scotland under title number AYR60330.

4.2 The Respondent is Tenant of the Property in terms of the Short Assured Tenancy between the parties. The term of the Tenancy was from 27th September 2013 to 26th March 2014 and continues month to month thereafter.

5. Requirements of Section 66 of the Procedure Rules.

(a) The Tribunal confirmed that the application correctly detailed the requirements of section 66 of the Procedure Rules namely:-

- (i) the name, address and registration number of the Landlord.
- (ii) the name and address of the Landlord's representative.
- (iii) the name and address of the Tenant.

(b) The Tribunal confirmed that the application had been accompanied by the documents specified in Section 66(b) of the Procedure Rules:

- (i) The Tenancy Agreement.
- (ii) The Notice that the tenancy is a short assured tenancy.
- (iii) The notice given to the tenant under section 33(1)(d) of the 1988 Act.
- (iv) The notice to quit served by the Landlords on the Tenant.
- (v) The required notice giving South Ayrshire Council notice of the proceedings under section 11 of the Homelessness etc Scotland Act 2003.
- (vi) Certificate of Service of the section 33 Notice and Notice to Quit on the Tenant.

(c) The Tribunal confirmed that the application form had been correctly signed and dated by the Landlords as required by Section 66(c) of the Procedure Rules.

6. Submissions

6.1 Mr Fraser advised the Tribunal that he considered it was reasonable for the Tribunal to grant the Order for Possession.

6.1.1 When the parties entered into the short assured tenancy agreement they were aware that an eviction order would be granted if the correct notice was given.

6.1.2 The Applicants are approaching retirement. They owned three buy to let properties and they have sold two of the properties. They wish to sell the one other property.

6.1.3 He explained that the Applicants have been having difficulties with the Tenant. Rent arrears have been accumulating. The Respondent has recently refused to apply for the discretionary payments in respect of the rent arrears.

6.1.4 There have also been difficulties with the Tenant and her partner and their neighbours.

6.1.5 As a result of these difficulties the Applicants wish to bring the contract to an end. They had previously served the Respondent with Notice to Quit in September 2020 but the incorrect period of notice had been given.

6.2 In response Ms Moseley explained:

6.2.1 She does not have a partner. She has five children ages 14,11,8, 5 and 1.

6.2.2 The Property is a three bedroom property.

6.2.3 She has had no issues with her neighbours.

6.2.4 She had previously spoken to David Hunter about her removing from the Property and he had offered her a payment to move out. She did not take up this offer.

6.2.5 She is on the Council waiting list for alternative accommodation. She is presently fourth on the list for four bedroom properties.

6.2.6 She was unaware that there were rent arrears. She is disappointed that the Landlords had not arranged a face to face meeting to sort out the rent arrears.

6.2.7 She explained that there are outstanding repairs required to the Property. She advised that she has not made a repairing standard application to the Tribunal.

6.2.8 She is not in receipt of Universal Credit. She has a cap on her housing benefit and she had previously received financial assistance of £13/£14 per week towards the arrears.

7. Findings in Fact

7.1 The Applicants are Landlords of the Property. They are owners of the Property and their title is registered in the Land Register of Scotland under title number AYR60330.

7.2 The Respondent is Tenant of the Property in terms of the Short Assured Tenancy between the parties. The term of the Tenancy was from 27th September 2013 to 26th March 2014 and continues month to month thereafter.

7.3 Notice to Quit had been served on the Tenant on 9th August 2021, requiring the Tenant to vacate the Property on 26th February 2022.

7.4 26th February 2022 is the end of the tenancy.

7.5 More than the required period of forty days notice for the Notice to Quit had been given to the Respondent.

7.6 The Tenancy had reached its end and tacit relocation is not operating.

7.7 The Section 33 Notice was dated 5th August 2021 and stated that the Applicants required possession of the Property on or before 28th February 2022.

7.8 The Section 33 Notice had been served on the Tenant on 9th August 2021.

7.9 The Section 33 Notice gave the Tenant more than the required period of six months notice.

7.10 A section 11 Notice had been intimated to South Ayrshire Council.

7.11 The Applicants wish to sell the Property as they require the sale proceeds as they are approaching retirement.

7.12 When the parties entered into the tenancy the Applicant's would have been entitled to an order for possession if the correct notices were served on the Respondent.

7.13 The Respondent lives in the Property with her five children.

7.14 The Respondent is in arrears with the rent in excess of £2000.

7.15 The Respondent has not been making payments towards the arrears.

7.16 The Respondent is not in receipt of Universal Credit but is in receipt of Housing Benefit.

8. Decision

8.1 The Tribunal find:

8.1.1 The Notice to Quit and Section 33 Notice have been correctly served on the Respondent and they are valid.

8.1.2 The section 11 Notice had been correctly served on the Local Authority.

8.1.3 Were it not for the Coronavirus (Scotland) Act 2020 the Tribunal would have been obliged to grant the order for possession. However, the Coronavirus (Scotland) Act 2020 requires the Tribunal to consider whether in all the circumstances it is reasonable to grant the order. The Tribunal weighed up the circumstances of both

parties. The Applicants wish to sell the Property as they need access to the sale proceeds for their retirement. The Respondent has rent arrears in excess of £2000 and has not made any payments towards the arrears since January 2021. The Tribunal would hope that the local authority would give the Respondent some priority for rehousing. In taking the foregoing factors into account the Tribunal determined that the balance of reasonableness was waited towards the Applicants.

8.1.4 As the Respondent said she was fourth on the Local Authority list for rehousing the Tribunal determined that some additional time should be given before any order for repossession comes into force. The Tribunal therefore determined to grant an order for possession but delayed its implementation until 30th September 2022.

8.1.5 The Tribunal finds the Applicant entitled to an order for the possession of the Property and the removal of the Respondent from the Property in terms of section 33 of the Housing (Scotland) Act 1988.

9. 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.

J. T

Legal Member

07 June 2022