



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/22/1565

Re: Property at 18 Dollar Park, Motherwell, ML1 2LF (“the Property”)

Parties:

Mr David Baillie, 13 Brownhill View, Bonkle, ML2 9QJ (“the Applicant”)

Mr Joseph Brownlie, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery and possession should be granted in favour of the Applicant

Background

1. This is an application in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The Applicant is seeking an order for recovery of possession in terms of section 33 of the Act.
2. Service by Advertisement was undertaken upon the Respondent from 19th August 2022 until 5th October 2022.
3. This case was conjoined with case CV/22/1566.

Case Management Discussion

4. A CMD was held on 5th October 2022 at 10am by teleconferencing. The Applicant was not present but was represented by Ms Collette Lloyd,

Independent Estates. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make representations in advance of the hearing.

5. Ms Lloyd told the Tribunal that she was still instructed to seek an order for eviction. It is believed that the Respondent moved out of the Property on 1st December 2021 but has not returned the keys to the Property. She said that a CMD was held on 1st March 2022 with a different tribunal but Ms Lloyd did not attend due to being unwell with Covid. As a result an order was not granted. After the CMD the Respondent had contacted Ms Lloyd's company and said that he was definitely to move in April 2022. However, this has not occurred insofar as him returning the keys and ending the tenancy. He had said at that point that he had not moved out because his new local authority property did not have white goods and he had been refused assistance with getting them. He could not move his children as result.
6. Ms Lloyd believes that the Property is empty both she and the Applicant have been to the Property on a number of occasions. Neither entered the building but there was no response at the door. The blinds were down they were not able to see the state of the Property. On or around Friday 23rd September 2022, the Police contacted Ms Lloyd's company to say that a window had been broken. The Police were told by neighbours that the Respondent had been evicted 6 weeks prior to that. Whilst Ms Lloyd noted that it was not factually correct in terms of the eviction it did indicate that there was no one living in the Property.
7. Ms Lloyd told the Tribunal that the arrears are still accruing. They currently are 3519.11. The local authority have contacted Ms Lloyd to say that there has been an over payment of £519.24 which is being recovered from her company as direct payments were made to her company for the Applicant. These payments stopped when the Respondent took his new property in December 2021. The Applicant withdrew the payment order application, CV/22/1566, as he considered the he would not be able to recover the outstanding amount as the Respondent is solely on state benefits.
8. The Tribunal was satisfied that all the documents had been appropriately served and there was no ground of reasonableness that would prevent the Order being granted.

Findings in Fact

9. The parties entered into a Short Assured Tenancy on 11th July 2014 for a 6 month period which was then continued on a month to month basis. An AT5 was signed by both parties on the same date as the lease. The rent payments of £375 are due on the 11th day of each month.
10. The Housing and Property Chamber received an Application dated 24th May 2022.

11. A Notice to Quit was served along with a section 33 notice on 8th April 2021. This was served by Sheriff Officers. A section 11 notice was served upon the local authority dated 27th October 2022.
12. The Respondent has moved into a local authority property on or around 1st December 2021. Direct payments from Housing Benefit stopped around this point.
13. The last communication between the Applicant's agents and the Respondent was in March 2022 when he confirmed that he would move out by April 2022. This did not occur.
14. On or around 23rd September 2022 the Police attended the Property and advised the letting agents that a window had been broken. The neighbours had told the Police that the Respondent had been evicted 6 weeks prior to that.

Reasons for Decision

15. The Tribunal was satisfied that there were no other issues of reasonableness before them and that the notices had been served in an appropriate manner and that a Short Assured Tenancy had been entered into by the parties. Given this the Tribunal was satisfied all appropriate paperwork had been served the Order for repossession was granted.

Decision

16. The Applicant is entitled to an Order of 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.

G. Miller

5th October 2022

Legal Member/Chair

Date