



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/22/1917

Re: Property at 40 Hillcrest Avenue, Glenburn, Paisley, PA2 8QW (“the Property”)

Parties:

Mr Jamie Millar, Mrs Nicola Millar, 12 Cumbrae Road, Glenburn, Paisley, PA2 8HA (“the Applicants”)

Miss Maria Millar, 40 Hillcrest Avenue, Glenburn, Paisley, PA2 8QW (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and made an Order for Possession of the Property.

Background

By application, received by the Tribunal on 16 June 2022, the Applicants sought an Order for Possession of the Property under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”), namely recovery of possession on termination of a Short Assured Tenancy.

The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Parties, commencing on 1 June 2017 and continuing on a year to year basis until ended by either Party. The Applicants also provided a copy of a Form AT5 Notice dated 1 June 2017, a Notice given under Section 33 of the 1988 Act and a Notice to Quit, both dated 11 November 2021, with proof of delivery of both Notices. The Notice to Quit required the Respondent to vacate the Property by 31 May 2022 and the Section 33 Notice also required her to remove by that date.

The Applicants stated in the application that they had begun the long process of selling the Property in October 2019. The Respondent had been informed of this in October 2019 but was refusing to leave. The sale process had yet to conclude due to the Respondent's refusal to leave, despite having been given 6 months' notice starting in November 2021. This had caused frustration to the Applicants both mentally and financially. They needed possession of the Property as soon as possible, as they no longer had funds to pay the mortgage and this was putting a major strain on the family.

On 23 November 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 14 December 2022. The Respondent did not make any written representations to the Tribunal.

First Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 9 January 2023. The Applicants were present. The Respondent was not present or represented.

The Applicants told the Tribunal that they need to sell the Property, as they have fallen into mortgage arrears. They confirmed, however, that they have not taken any steps to market the Property and cannot do so until they recover possession. The Respondent had been living in the Property with her three children but is presently living there alone. The mortgage payments were met in part by the rent, but the Respondent is no longer receiving Universal Credit and, as she does not work, she is unable to pay the rent. The Applicants stated that no rent had been paid since December 2021. The Applicants themselves have three children, all still at school, to support. They understand that the Respondent hopes to be rehoused by the local authority, but that will not happen unless the Tribunal makes an Order for Possession.

The Tribunal accepted that this was not an application based on the Respondent being in rent arrears, but the Applicants had stated that their mortgage was in arrears and the question of rent was, therefore, a valid consideration in determining the question of reasonableness. The Tribunal was not satisfied that it had sufficient relevant information to enable it to decide that it was reasonable to make an Order for Possession. Rather than refuse the application, however, the Tribunal decided to continue the case to a further Case Management Discussion and to allow the Applicants the opportunity to present any further evidence they wish, to support their argument that it would be reasonable to make an Order for Possession. As the reasons stated were, in essence, financial, the Applicants might wish to submit a current mortgage statement and a current written Rent Statement. Accordingly, the Tribunal continued the case to a further Case Management Discussion.

On 21 January 2023, the Applicants provided the Tribunal with a Rent Statement showing arrears of £16,150 at December 2022, a mortgage statement and evidence by way of correspondence from their mortgage lenders, Birmingham Midshires and the lenders' solicitors regarding mortgage arrears.

Second Case Management Discussion

A second Case Management Discussion was held by means of a telephone conference call on the morning of 17 April 2023. The Applicants were present. The Respondent was not present or represented.

The Applicants told the Tribunal that no rent had been received since the date of the Rent Statement and that their mortgage arrears were now approximately £1,500. Birmingham Midshires had indicated to them that they would commence proceedings to repossess the Property depending on the outcome of the present application for an Order for Possession. The Applicants confirmed that the Respondent is living alone in the Property and that their intention is to sell immediately, in order to pay off their mortgage.

Reasons for Decision

Section 33 of the 1988 Act states that the Tribunal may make an Order for Possession of a house let on a Short Assured Tenancy if it is satisfied that the Short Assured Tenancy has reached its end, that tacit relocation is not operating, that no further contractual tenancy is for the time being in existence, that the landlord has given to the tenant notice stating that he requires possession of the house, and that it is reasonable to make the Order for Possession.

The Tribunal was satisfied that the tenancy had reached its end, that, by service of the Notice to Quit, tacit relocation was not operating, that there was no further contractual tenancy in existence between the Parties and that the Notice required under Section 33 of the 1988 Act had been properly given. The remaining question for the Tribunal was, therefore, whether it would be reasonable to make an Order for Possession.

The Tribunal considered carefully all the evidence before it, noting that the Applicants were reliant on the rent to fund their mortgage and that no rent had been received since November 2021. This had followed a period from February 2022 to June 2021 during which no rent had been paid. This had had a significant emotional impact on the Applicants and on their ability to service their mortgage and the mortgage lenders were considering repossession proceedings. Having taken into account all the facts and circumstances, the view of the Tribunal was that it would be reasonable to make an Order for 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.

George Clark

Legal Member/Chair

17th April 2023