



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

Reference number: FTS/HPC/EV/22/3784

Order granted on 24 May 2023

Property: 22 Crofthead Crescent, Bellshill, ML4 2AF (“The property”)

Parties:

Miss Nicola Adams, 6 Golf Place, Bellshill, ML4 2DH (“the Applicant”)

And

Ms Debbie Lilley, residing at 22 Crofthead Crescent, Bellshill, ML4 2AF (“the Respondent”)

Tribunal Members:

Paul Doyle (Legal Member)

Ms Jane Heppenstall (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) makes an order for possession of the Property in terms of section 33 of the Housing (Scotland) Act 1988.

Background

1. The Applicant sought recovery of possession of the Property in terms of Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Applicant had lodged with the Tribunal Form E. The documents produced were a Tenancy Agreement, an AT5, a Notice to Quit and s.33 notice, together with a notice under s.11 of the Homelessness (Scotland) Act 2003. A copy land certificate was lodged with the Tribunal which showed that the applicant is heritable proprietor of the Property.

Case Management Discussion

2. A Case Management Discussion took place before the Tribunal by telephone conference at 2.00pm on 14 February 2023. The Applicant was represented by John Jarvie, of Bannatyne Kirkwood France & Co, solicitors. The respondent was represented by Mark Law, of Hamilton CAB. At the Case Management Discussion, the tribunal made the following findings of fact, and identified the sole remaining area of dispute between the parties.

Findings of Fact

(i) On 18 August 2016 the applicant and respondent entered into a short assured tenancy agreement. On the same day, the respondent received form AT5 from the applicant. The lease was extended until a notice to quit and s.33 notice were served on the respondent on 12/05/2022.

(ii) S. 11 notices were served on both the respondent and North Lanarkshire Council by the applicant.

(iii) In August 2022 the applicant instructed estate agents to sell the property. Estate Agents suggest a price guide of £115,000 for the property.

(iv) The respondent remains in the property.

The area of Dispute

The Applicant seeks recovery of possession of the Property in terms of s.33 of the Housing (Scotland) Act 1988. The tenancy was a short-assured tenancy. Correct notice was given to bring the short-assured tenancy to an end. An order cannot be granted unless the Tribunal is satisfied that it is reasonable to issue an eviction order. The sole area of dispute is whether or not it is reasonable to grant an eviction order.

EVIDENTIAL HEARING

4. The case was continued to an evidential hearing which took place at 10am on 24 May 2023. The Applicant was present and was represented by John Jarvie, of Bannatyne Kirkwood France & Co, solicitors. The respondent was represented by Mark Law, of Hamilton CAB.

5. Mr Jarvie and Mr Law told us that agreement had been reached. Mr Law consented to Mr Jarvie's motion for an order for repossession of the property which cannot be enforced before 5 July 2023.

Reasons for decision

6. The Applicant seeks recovery of possession of the Property in terms of s.33 of the Housing (Scotland) Act 1988 because the short-assured tenancy had been brought to an end on 28 July 2022 by service of the s.33 notice.

7. The respondent does not resist the application. The applicant is content to wait until 05 July 2023 before repossessing the property. The weight of reliable evidence indicates that it is reasonable to grant an order for repossession of the property, but to delay enforcement of the order until 05 July 2023. The respondent no longer challenges the reasonableness of an order for repossession of the property.

8. The tenancy was a short-assured tenancy. Correct notice was given which brought the short-assured tenancy to an end on 28 July 2022. The basis for possession set out in s.33 of the 1988 Act is established.

9. The respondent withdraws her resistance to the application. The finite time for occupancy of the property as a short-assured tenancy has come to an end. The test of reasonableness is met.

10. On joint motion, we are asked to grant an order for repossession which cannot be enforced before 05 July 2023. For these reasons, the Tribunal determined to grant an Order for possession.

11. The Tribunal makes an Order for possession of the Property in terms of Section 33 of the 1988 Act.

Decision

For the foregoing reasons, the Tribunal determined to make an Order for possession.

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.

Paul Doyle

24 May 2023

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