



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 (“the 1988 Act”)

Chamber Ref: FTS/HPC/EV/23/0114

Re: Property at 40 Maxwell Street, Girvan, KA26 9EJ (“the Property”)

Parties:

Mr Alan Harkness, 17 Vicarton Street, Girvan, KA26 9HF (“the Applicant”)

Cheryl Cooper, 40 Maxwell Street, Girvan, KA26 9EJ (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession in terms of section 33 of the 1988 Act be made in favour of the Applicant.

1. Background

1.1 This is an application under Rule 66 of the Chamber Rules whereby the Applicant sought an order for recovery of possession of the property let on a short assured tenancy. The application had been accompanied by, amongst other things, copies of the written tenancy agreement between the parties, the notice to quit and notice in terms of section 33 of the 1988 Act.

1.2 A Case Management Discussion (“CMD”) had taken place on 27 April 2023. A note was produced and parties ought to read this decision in conjunction with it. In advance of that CMD, the Applicant had applied to the Tribunal for dispensation of the requirement to have served notice in terms of section 19 of the 1988 Act and, thereafter, consideration of granting the order sought on ground 1A of schedule 5 of the 1988 Act. The Tribunal had expressed reservations about the competency of doing so given that the application was continuing under Rule 66 of the Chamber Rules and had requested, via direction, additional submissions regarding the competency

of the application. The same direction required both parties to lodge various supporting documents with regards to the parties circumstances by 1 June 2023. A hearing was thereafter fixed to proceed by Webex.

1.3 The Applicant lodged further documentation on 1 June 2023. Nothing further was received from the Respondent until 11 August 2023.

2. The Hearing

2.1 The Hearing took place on 17 August 2023 by Webex. The Applicant was represented by Ms Michelle Eden, lay representative. He was not present. Ms Eden advised that this was due to ill health and she simply wished to proceed in his absence. The Respondent was personally present and represented by Mr David Anderson of Ayr Housing Aid Centre.

2.2 The Tribunal dealt firstly with the late lodging of documents on the part of the Respondent. Mr Anderson explained that the bulk of the documents had only been received after the deadline specified in the direction had passed. The difficulties with obtaining information, compounded by members of his organisation being on leave led to the response to the direction being late. Ms Eden advised that she did not take much of any issue with the content of the documents but felt that parties ought to abide by the rules set. The Tribunal noted that the documents, comprising of correspondence from her representatives, from South Ayrshire Council, the Department of Work & Pensions detailing Universal Credit entitlement, a medical letter and a letter from a minister were likely material in determining the question of reasonableness and not particularly lengthy, allowed them to be lodged, although late.

2.3 The Tribunal then dealt with the outstanding issue of the Applicant's application to also give consideration to issuing the order sought on the basis of ground 1A of schedule 5 of the 1988 Act. The Tribunal noted no further submissions had been lodged and gave Ms Eden an opportunity to make any submissions in support of this. She explained that the Applicant's health and financial circumstances had worsened since he had initially taken steps to end the tenancy hence he now sought to rely on ground 1A. The Tribunal noted that an order on any of the grounds in schedule 5 of the 1988 Act could only be issued following an application under rule 65 of the Chamber Rules. The Tribunal determined that the application could not simultaneously proceed under two rules and refused the application to consider an order under ground 1A.

2.4 As the Applicant was absent, Ms Eden confirmed that she had no other witnesses she wished to give evidence. Mr Anderson advised that, although the Respondent was present, she did not wish to speak and give evidence. Both parties therefore wished the hearing to proceed on the basis of their submissions only. Following a brief adjournment, the Tribunal confirmed that the hearing would proceed in this format. The parties were in agreement that the only issue for the Tribunal to determine was whether it was reasonable to grant the order sought.

- 2.5 Ms Eden advised that the Applicant had initially began attempting recovery of the property in April 2022. The Respondent had known since then that that was the Applicant's intention. She had only made an application for rehousing in January 2023. The Applicant's health had deteriorated and, whilst still awaiting biopsy results, it was suspected that he was suffering from cancer. He required an adapted home that was fully accessible and with a wet room. An occupational therapist was to assist with this. The Applicant was willing to work with the Respondent to make her removal as easy as possible and the immediate removal of the Respondent was not sought, however, the Applicant needed a date to work towards in terms of adapting the property. The Applicant had been unable to obtain access recently and was unaware if a repair to a glass door had been carried out. The Applicant had been unable to pay for solicitor representation due to his financial hardship. In addition to his physical health conditions, he was suffering from poor mental health.
- 2.6 In response to questioning from the Tribunal, Ms Eden confirmed that the caravan was located in East Ayrshire and was not capable of being adapted for the Applicant. The Applicant owned the caravan with outstanding finance but required to pay ground rent. He had resided there for approximately two years, having purchased it due to it being level access accommodation. On recovery of the property it was his intention to surrender the caravan in order it could be sold by the creditor to repay the loan. The Applicant had returned to work against medical advice and was working limited hours as a lorry driver, earning £11.00 per hour. He did not own any other properties and that which was the subject of the present application was suitable accommodation for him. All rooms were on the ground floor albeit the property also had a loft conversion that would not be used as a room. A tenancy reference had now been provided to South Ayrshire Council in respect of the Respondent.
- 2.7 Mr Anderson confirmed that he recognised that, given the Applicant's health conditions and need for the property, he would be entitled to recover possession however that should be delayed, potentially until next year to allow the Respondent to find alternative accommodation. Housing in South Ayrshire was in high demand. The Respondent had applied to the local authority but was nowhere near the top of the list. She herself suffered from a number of health conditions as detailed in the representations previously lodged and confirmed by the medical letter lodged. She was religious and relied on her church congregation for support. Mr Anderson highlighted that the Respondent had been intimidated last year by the Applicant and his representative and that would explain difficulties with access more recently. The Applicant still had post delivered to the property.
- 2.8 In response to questioning by the Tribunal, Mr Anderson confirmed that the Applicant earned a small sum of money each month from selling arts and crafts but that, on average, amounted to £60 to £70 each month. She was reliant on Universal Credit. She lived alone. She had made an application

to the local authority for rehousing however an earlier application had gone missing. There had been a delay in her current application going live due to the delay in the Applicant issuing a tenancy reference. The Respondent had chosen to apply to the mainstream housing list as opposed to making a homelessness application and was seeking a two bedroom property in Girvan to remain close to her support network. The mainstream housing list allowed the Respondent to seek an extra bedroom although it was recognised she may only obtain a one bedroom property through a homelessness application. South Ayrshire Council received the highest number of homeless applications out of all the Ayrshire local authorities.

2.9 Following submissions, the Tribunal indicated it would consider those and all documents lodged by the parties and would issue a decision with written reasons thereafter.

3. Findings in Fact

3.1 The parties entered into a short assured tenancy agreement which commenced on 23 June 2017. Following an initial period of six months, the lease tacitly relocated in the absence of notice being given by either party.

3.2 On 10 October 2022, the Applicant served a notice to quit by Sheriff Officer terminating the contractual tenancy agreement as of 23 December 2022. Notice under section 33 of the 1988 Act was also given to the Respondent that the Applicant required possession of the property as of 24 December 2022.

3.3 The Respondent continued to reside at the property alone. She suffered from a number of health conditions, including Sjoren's syndrome, which affected her mobility.

3.4 The Respondent had made an application for rehousing to South Ayrshire Council in January 2023. She applied to the mainstream housing list for a two bedroom property within three areas of Girvan in order to remain close to sources of support. No homeless application had been made by the Respondent.

3.5 The Respondent's income was primarily composed of Universal Credit and a small sum of earnings from casual self employment selling arts and crafts. Her low income limited her ability to source accommodation in the private sector.

3.6 The Applicant suffered from a number of health conditions, including arthritis, and was undergoing investigations into possible cancer. His health conditions limited his ability to work and he required level access accommodation.

3.7 The Applicant's income was comprised of his earnings and Personal Independence Payments. He was incurring outgoings in relation to his

occupation of the caravan and his acting as a landlord in respect of the property which were causing hardship.

3.8 The Applicant was residing in a caravan. He had no other accommodation available to him and intended to reside at the property which was to be adapted to his needs. The caravan was not capable of adaptation.

3.9 There was a high demand for housing in South Ayrshire. The Applicant had not received any offer of housing and was ranked between 100 to 108 in terms of the number of applicants on the list for each of the three areas she had selected.

4. Findings In Fact & In Law

4.1 By virtue of service of the notice to quit the short assured tenancy between the parties had reached its finish and tacit relocation was no longer operation. The Applicant had given two months' notice that he required possession of the property and was entitled to an order for recovery of possession in terms of section 33 of the 1988 Act.

4.2 In all of the circumstances, it was reasonable in terms of section 33(e) of the 1988 Act for an order for recovery of possession to be granted.

5. Reasons For Decision

5.1 Section 33 of the 1988 Act is in the following terms:-

*33.— Recovery of possession on termination of a short assured tenancy.
(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied—
(a) that the short assured tenancy has reached its ish;
(b) that tacit relocation is not operating;
(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and
(e) that it is reasonable to make an order for possession.*

In the present application, the Applicant had served a valid notice to quit and given the requisite period of two months in terms of section 33(2) that possession of the property was required. It was a matter of agreement between the parties that the only issue was one of reasonableness.

5.2 Broadly, there was little in the way of a factual dispute between the parties. At the previous CMD, the parties representatives had confirmed that no issue was taken with the narration of each of their personal circumstances, including health conditions, which were contained with the paper apart and submissions. Whilst certain allegations had been made regarding both

parties' conduct during the tenancy, the Tribunal did not deem these relevant to the material issue in this application and made no findings as to what had occurred, nor placed any weight on these.

- 5.3 The legislation did not specify any particular factors to which the Tribunal was to have regard beyond the factual matters which constituted the ground for an eviction order relied upon. Accordingly, the Tribunal approached the issue of reasonableness in accordance with the case of *Barclay v Hannah* 1947 SC 245 whereby the Tribunal was under a duty to consider the whole facts and circumstances in which the application was made.
- 5.4 The Tribunal balanced the needs and resources of each of the parties. Whilst both parties suffered from health conditions which made the obtaining of accommodation more difficult, the Tribunal recognised that the Applicant's financial situation was worsening due to his outgoings in connection with his occupation of the caravan and acting as a landlord. Furthermore, although the Respondent could be considered a vulnerable individual who was also limited in her ability to secure alternative accommodation, it would appear that she had not yet explored all options available to her. It was within the Tribunal's knowledge that she may be able to improve her priority for social housing by invoking the duties incumbent upon the local authority in terms of the Housing (Scotland) Act 1987 ("the 1987 Act") whereby they would be required to ensure accommodation did not cease to be available for her occupation.
- 5.5 The Tribunal was also mindful that the Cost Of Living (Tenant Protection) (Scotland) Act 2022 applied to the present application. The legislation is currently due to expire on 30 September 2023, preventing any enforcement of the order before that date. Notwithstanding this, the Tribunal considered it was appropriate to delay any enforcement of the order under rule 16A(d) of the Chamber Rules until 31 October 2023. The Tribunal considered that would be sufficient time for the Respondent to obtain alternative accommodation, particularly if she were to broaden her areas of choice and to make an application to the local authority under the 1987 Act.
- 5.6 Parties should note that the Tribunal's understanding of the intention of the Scottish Parliament is to extend the application the Cost Of Living (Tenant Protection) (Scotland) Act 2022 until 31 March 2024. In the event this is done, any moratorium of enforcement of the order contained within the legislation would supersede the delay ordered by the Tribunal.

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.

A Houston

29/08/2023

Legal Member/Chair

Date