



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/23/0582

Re: Property at 11 Seaview Road, Buckie, Banffshire, AB56 1QY (“the Property”)

Parties:

Mr Neil Stables, 76 Mitre Road, Glasgow, G14 9LL (“the Applicant”)

Miss Susan Smith, 11 Seaview Road, Buckie, Banffshire, AB56 1QY (“the Respondent”)

Tribunal Members:

Yvonne McKenna (Legal Member) and Mike Scott (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession upon termination of a short assured tenancy be granted.

Background

1. By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under section 33 of the Housing (Scotland) Act 1988. In support of the application the Applicant provided the following documentation:-

- (i) Short Assured Tenancy Agreement between the parties dated 30 October 2017 together with Form AT5 dated 30 October 2017 and signed acknowledgement by the Respondent dated 30 October 2017;

- (ii) Notice to Quit dated 25 November 2022 together with proof of service by recorded delivery mail with the signature of the Respondent on 28 November 2022;
- (iii) Notice under section 33 of the Housing (Scotland) Act 1988 dated 25 November 2022 together with proof of service by recorded delivery mail with the signature of the Respondent on 28 November 2022
- (iv) Notice under section 11 of the Homelessness (Scotland) Act 2003 to the local authority; and
- (v) Rent Statement dated 2 February 2023

2. By Notice of Acceptance of Application dated 22 March 2023 a Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was assigned for the 27 April 2023 to take place by teleconference due to the restrictions imposed by the Covid-19 pandemic. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondents by Sheriff Officers on 24 March 2023.

3. The application was conjoined with an application for a Payment Order under reference FTS/HPC/CV/23/0583.

4. No written representations had been lodged by the Respondent in advance of the Case Management Discussion.

Case Management Discussion

5. The Case Management Discussion took place by teleconference on 27 April 2023 at 10am. The Applicant was represented by Mr John Jarvie. The Respondent was present.

6. The Tribunal explained the purpose of the Case Management Discussion and the legal test, and asked Mr Jarvie to address it on the Applicant's position.

7. Mr Jarvie advised that the Applicant sought an eviction order in terms of section 33 1 (d) of the Housing (Scotland) Act 1988. He submitted that the

Short Assured Tenancy commenced on 30 October 2017 and that a Notice to Quit and a Section 33 Notice were served on 28 November 2022 which ended the contractual tenancy. The lease reached its "ish" on 28 January 2023 and tacit relocation is not ongoing. Given that section 33 is fulfilled he sought eviction.

8. On the issue of reasonableness he founded on the ongoing nature of the arrears and the considerable financial prejudice suffered by the Applicant. He referred to the updated rent statement which had been lodged with the conjoined payment action and which showed that the rent arrears at the date of the hearing amounted to £1293.75. He stated that the rent statement showed that the Respondent had been in arrears of rent since October 2021, a period of 18 months. He stated that the Applicant had tried to bear with the Respondent but that the position was no longer viable as the arrears had been in existence for so long. He said that the Applicant is subsidising the Respondent remaining in the Property at a discounted rent. The Applicant wishes to be in a position to make revenue again with the Property and with the rising costs associated with running a tenancy the ongoing position was unfair. He sought to bring the tenancy to an end and submitted in the circumstances that it was reasonable to do so.

9. The Respondent accepted that the arrears were as set out by the Applicant. She stated that since January 2023 she had been paying £143.75 towards the arrears each month. She is a single parent and lives in the Property with her 4 children who are aged 17, 15, 14 and 11. They are all still at school. She has been unemployed long-term. She is in receipt of Universal Credit and has recently made an application for additional benefits due to her disability. She was diagnosed with fibromyalgia in July 2022 but had been unwell for the past few years and had been in and out of hospital. In addition she receives some maintenance from the father of her children. She has contacted the local authority and has been on the lookout for another property. The local authority has told her that there are no other properties available for her and that they cannot do anything, "until something happens". The Property is a 3 bedroomed house and it is not ideal for the family. She said that for the past 5 years that she has been sleeping on the couch. She had accepted this private lease when she moved in as she had been homeless at that time and unable to

source anything else. She said that she had missed a couple of payments and didn't know how that had happened. She said that it was not deliberate. She accepted that she was paid Housing Benefit directly of £575 per month and that in retrospect it might have been better if that had gone directly to the Applicant. She said that she accepted that she had made mistakes and that she held her hands up to that.

10. In response Mr Jarvie relied on his initial submissions and said that the local authority will always state to tenants that they require to have an eviction order against them before they will consider them for emergency accommodation. The current situation is not sustainable for either party. With regard to the Respondent's attempts to pay off the arrears he stated that from a financial perspective it was difficult for the Applicant to rely on consistent payments towards the arrears.

Findings in Fact

11. The Applicant entered into a Short Assured Tenancy Agreement with the Respondent which commenced on 30 October 2017 for a period until 29 April 2018 and monthly thereafter.

12. The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.

13. On 25 November 2022 the Applicant delivered a Notice under section 33 of the Housing (Scotland) Act stating that the Applicant required the property back by 29 January 2023 and a Notice to Quit to the Respondent which sought to terminate the tenancy as at that date. The Notice to Quit was in the prescribed form. The Notices were served by recorded delivery mail and were signed for by the Respondent on 28 November 2022.

14. The Notice to Quit terminates the tenancy as at 29 January 2023 which is a valid ish date.

15. The Respondent has accrued rent arrears in the sum of £1293.75. The Respondent has been in arrears of rent continually since October 2021.

16. The Respondent lives in the Property together with her 4 children who all attend school and are aged 17,15,14 and 11. She is reliant on Universal Credit and Housing Benefit together with support from the children's father.

17. The Respondent has received Housing Benefit over the period that rent arrears have accrued made payable directly to her for the full rental amount.

18. The Respondent has chosen not to pay the full rent over that period.

19. Since January 2023 the Applicant has been making payments to the arrears of £143.75 per month.

20. The Applicant served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on Moray Council on 23 February 2023.

21. It is reasonable to make the order sought by the Applicant.

Reasons for Decision

22. The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved.

23. The Tribunal was satisfied that the Respondent had been served with a valid Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988. The issue for the Tribunal to determine therefore was whether it was reasonable in all the circumstances to grant an eviction order.

24. The Tribunal noted that the Applicant had been financially prejudiced due to the fact that the Respondent had been in continual rent arrears for a period of 18 months. The Respondent had received full Housing Benefit to pay her rent and had chosen not to do so. She did not provide any reason to the Tribunal as to why this was the case and acknowledged that she had made mistakes in that regard. The Tribunal accepted that she had a medical condition but the Respondent did not give any reason as to why she had not paid her rental money over to the Applicant. The Tribunal also had cognisance

of the fact that the Respondent had sought assistance from the local authority in obtaining alternative housing and the fact that the Respondent stated that she had been forced into accepting this lease as she was homeless at the time and it was not ideal for the family's requirements. There was no information before the Tribunal to contradict the position put forward by Mr Jarvie which the Tribunal found to be straightforward and credible, therefore having balanced the particular facts and circumstances of this case the Tribunal concluded that it would be reasonable to make an eviction order.

25. It should be noted that this was an application to which the Cost of Living (Tenant Protection) (Scotland) Act 2022 applies. As at the time of writing this prevents any action being taken to enforce the eviction order prior the earlier of (a) the day following the end of a period of 6 months beginning with the day on which this order was granted as specified above, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 which is at the time of writing the 30 September 2023.

29 The decision of the Tribunal was unanimous.

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.

Yvonne McKenna

Yvonne McKenna

Legal Member/Chair

27 April 2023

Date

