



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/23/1361

Re: Property at 79 Salisbury Street, Kirkcaldy, KY2 5HP (“the Property”)

Parties:

Mrs Darshan Kaur, 20-21 Glen More Gardens, Kirkcaldy, KY2 6UW (“the Applicant”)

Mr Georgios Ivankof, 79 Salisbury Street, Kirkcaldy, KY2 5HP (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mrs F Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted.

Background

1. This is a Rule 66 application received in the period between 26th April and 31st May 2023. The Applicant is seeking an order for possession of the Property. The Applicant lodged a copy of the short assured tenancy agreement between the parties that commenced on 2nd September 2017 until 2nd March 2018 and monthly thereafter at a monthly rent of £340, copy Notice to Quit and section 33 notice dated 19th October 2022, copy section 11 notice with evidence of service, Form AT5, and bank statements.
2. By emails dated 31st July, 4th, 11th and 27th August 2023, the Applicant lodged written representations.
3. By email dated 15th August 2023, the Respondent lodged written representations.

The Case Management Discussion

4. A Case Management Discussion took place by telephone conference on 30th August 2023. Both parties were in attendance.

The Applicant's position

5. The Applicant confirmed that service of the notice to quit and section 33 notice was made by recorded delivery on the Respondent on 19th October 2023, although she had not lodged any evidence to that effect. She said she now has the posting and delivery receipt.
6. The Applicant referred to her written submissions including a submission that she be allowed to amend the application to include ground 12A as the Respondent is now in arrears of a sum that amounts to more than 6 months' rent. The Tribunal explained that ground 12A is only relevant in respect of a private residential tenancy. This is a short assured tenancy, and the relevant ground would be ground 8A. However, the application is a Rule 66 application, which is not based on grounds of eviction, but on the short assured tenancy coming to an end. No form AT6 had been served, and the Respondent had no notice at the time of serving the notice to quit and section 33 notice that his tenancy may be brought to an end on the ground of rent arrears. Furthermore, no evidence to support the ground of eviction had been lodged with the Tribunal. The Applicant confirmed that she would proceed on the basis of the Rule 66 application.
7. The Applicant said rent was not paid in March 2021, July 2022, and March, April, June and August 2023. The total arrears are £2845, which includes an unpaid monthly rent increase of £35 for a period of 23 months. The Applicant claimed to have a letter that had been sent to the Respondent dated 2nd May 2021 informing him of the rent increase.
8. The Applicant said the Respondent has caused damage to the property by blocking vents, damaging fans and breaking smoke alarms. He has refused access to the Applicant to inspect the Property and has been difficult in arranging access for a gas safety inspection. The gas safety inspection has only recently taken place, after a considerable period of time when it could not be arranged due to the Respondent's behaviour. The bathroom has no external window and his actions have contributed to dampness. A Wise Property Care Ltd. report submitted by the Applicant indicated work needed to be done to remedy this and would take 3-4 days during which the tenant would have to be out of the Property. It was her position that the Respondent is totally unreasonable. She and her husband are professional landlords with over twenty properties and they have never had a tenant like this. The Respondent is very difficult to contact and resists attempts to engage over rent arrears or to give access to the Property, and he has changed the locks. The Respondent's behaviour is causing them stress, and the Applicant and her husband have health issues that are worsened by the stress as well as needing to care for an adult son who is disabled.

The Respondent's position

9. The Respondent confirmed that he had received the notice to quit and section 33 notice in October 2022.
10. The Respondent referred to his written representations, and said he had been treated badly by the Applicant and her husband, who are always creating intrigues and behaving in a crafty way. He had been forced to call the police because of the Applicant's husband's behaviour in making frequent visits for minor matters and disturbing his private life, and this had resulted in notice being served to end the tenancy. He disputed that he owed the sum claimed, stating that he owed four months' rent for March, April, June and August 2023. His position in relation to the rent increase was that he had not been served with any paperwork in this regard, but had only been told verbally by the Applicant's husband that the rent had increased. The Respondent said he had paid some rent in cash and had made some late payments. If his rent was due on a Saturday, the Applicant's husband would come to his door on the Monday morning and ask for payment. The parties had disagreed over payment for a plumber to carry out work. The Respondent said there were always arguments about everything. The Respondent denied that he had damaged the Property. It was his position that contractors appointed by the Applicant had caused the damage and blamed him.
11. The Respondent said he lives alone, and has no dependents. He is in full-time employment. He has some minor health issues that are under investigation, but they do not affect the type of property he can live in. The Property is a one-bedroom flat. The Respondent said he applied for council housing when he received the notification from the Applicant in October 2022. He has had letters from the local authority stating that he has no points. He had a letter more recently asking if he wished to remain on the housing list and he confirmed that he did wish to do so. He has not discussed the possibility of becoming homeless with the local authority. He said he cannot access private rented housing, as he has no savings with which to pay a deposit. The Respondent said he does not want to live in the Property. The situation causes him stress. He has had to block the Applicant's husband on his phone.
12. The Respondent said he had encountered financial difficulties in March 2023. He said he had run out of money in August 2023. Asked whether he intended to enter into a payment plan to pay his arrears, he said he could do so if the Applicant wanted him to. He said he would pay the rent and arrears when he has the money.

Findings in Fact and Law

13.
 - (i) Parties entered into a short assured tenancy agreement in respect of the Property that commenced on 2nd September 2017 until 2nd March 2018 and monthly thereafter at a monthly rent of £340.
 - (ii) Notice to Quit and Section 33 Notice were served on the Respondent.
 - (iii) The short assured tenancy has reached its ish date.
 - (iv) The contractual tenancy terminated on 3rd December 2022.
 - (v) Tacit relocation is not in operation.
 - (vi) The Applicant has given the Respondent notice that they require possession of the Property.
 - (vii) It is reasonable to grant the order for possession.

Reasons for Decision

14. Section 33 of the Act provides that the Tribunal may make an order for possession if satisfied that the short assured tenancy has reached its finish, tacit relocation is not operating, the landlord has given notice to the tenant that they require possession, and it is reasonable to make the order.
15. The contractual tenancy has been terminated and tacit relocation is not in operation. The Applicant has given the Respondent notice that they require possession of the Property.
16. In considering reasonableness, the Tribunal took into account the circumstances of both parties, noting that the situation and the relationship breakdown is causing stress to both parties. There was no evidence before the Tribunal to substantiate the Applicant's claim that the sum of £2845 is outstanding in rent arrears or that the rent increase had been properly intimated to the Respondent. However, the Respondent accepted that there are four months of rent arrears amounting to £1500. The Tribunal took into account the Respondent's circumstances, including the length of the tenancy, and noting that he lives alone with no dependents and is in full time employment. The Respondent did not offer any explanation as to how his rent arrears arose, other than to say he had unexpected expenses and the cost of living crisis had aggravated matters. The Respondent has made no effort to put in place any payment plan, nor did he have any proposals to put to the Tribunal as to how he intended to pay his rent going forward or clear his arrears. He has recently 'run out of money' and been unable to pay the rent. In all the circumstances, the Tribunal was not persuaded that the Respondent

is taking the matter of rent payment or his rent arrears seriously. This is impacting upon the Applicant, who is entitled to payment of rent lawfully due.

17. In all the circumstances, the Tribunal considered it reasonable to grant the order.

Decision

18. An order for possession of the Property is granted under section 33 of the Housing (Scotland) Act 1988. The order is not to be executed prior to 12 noon on 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, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022.

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.

Helen Forbes

Legal Member/Chair

30th August 2023
Date