



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/20/2583

Re: Property at 4 Craigsdow Road, Troon, KA10 7JN (“the Property”)

Parties:

Miss Heather Daly, 13 Highfield Avenue, Prestwick, KA9 2ET (“the Applicant”)

Mr Jack Moir, 4 Craigsdow Road, Troon, KA10 7JN (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondent)

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

On 14th December 2020 the Applicant lodged an Application with the Tribunal under Rule 66 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property.

Lodged with the application were: -

1. Copy Tenancy Agreement dated 17th May 2015 with the initial rental period being 9th June 2015 to 10th December 2015 then monthly thereafter;
2. Copy AT5 dated 17th May 2015;
3. Copy Notice to Quit dated 3rd June 2020 for 10th December 2020;
4. Copy Section 33 Notice dated 3rd June 2020 for 10th December 2020;
5. Section 11 Notice;
6. Recorded Delivery Proof of Service of Notice.

The Application was served on the Respondent by Sheriff Officers on 8th January 2021 by leaving it in the hands of his carer.

Case Management Discussion

The Case Management Discussion (“CMD”) took place by teleconference. The Applicant’s representative, Scott Thomson of Homesure Property Management dialled in. There was no attendance by the Respondent or any representative on his behalf.

The Tribunal explained the purposes of a CMD in terms of Rule 17 of the Rules and asked Mr Thomson to present his case.

Mr Thomson said that the reason that the Applicant was seeking to evict the Respondent was due to rent arrears. The Applicant received a Housing Benefit payment in respect of the Respondent’s rent in the amount of £322.28 per month. The contracted rental amount is £400 per month, meaning that the Respondent is expected to meet a shortfall of around £80 per month. The current arrears are around £1800. He said that in the past the Applicant had not pushed too hard in respect of the shortfall, but as a result of the coronavirus pandemic she was experiencing some financial hardship herself due to working in the airline industry, and she needed to ensure that she could continue to pay the mortgage on the property.

Mr Thomson said that the Respondent had been in arrears to an extent really since the outset of the tenancy in 2016. He would be written to periodically and would then start paying the top up, but it was very sporadic. The arrears had been increasing since 2018. The Respondent had made a payment of £25 in June 2020 after receiving service of the notices, and another payment in September 2020, but he was not consistent.

The Tribunal noted that Sheriff Officers had served the application on the Respondent’s carer. Mr Thomson said that he was aware that the Respondent had some sort of disability but he did not know what it was. He was not aware of the age of the Respondent, but confirmed that he did live alone.

Findings in Fact

1. The parties entered into a Tenancy Agreement in respect of the property;
2. The Tenancy Agreement was dated 17th May 2015 with the initial rental period being 9th June 2015 to 10th December 2015 then monthly thereafter;
3. An AT5 Notice was served prior to the commencement of the tenancy;
4. The tenancy was therefore a Short Assured Tenancy in terms of section 32 of the Housing (Scotland) Act 1988;
5. Notice to Quit and section 33 Notice have been served on the Respondent;

6. The correct notice period of 6 months, in terms of the amendments made to the housing (Scotland) Act 1988 by the Coronavirus (Scotland) Act 2020 has been given;
7. This Application was served on the Respondent by Sheriff Officer on 27th January 2021 in the hands of his carer;
8. The Respondent receives partial housing benefit;
9. The Respondent requires to pay a top up to meet the full rental payment;
10. The Respondent is in rent arrears in the amount of £1800;
11. The Respondent has been in rent arrears to some degree since the outset of the tenancy;
12. The Respondent's arrears began to increase in 2018;
13. The Respondent has made sporadic payments in June and September 2020.

Reasons for Decision

It is usually mandatory to grant an application under section 33 of the Housing (Scotland) Act 1988 provided that notices have been served correctly. However, Section 2 and Schedule 1 of the Coronavirus (Scotland) Act 2020 amended the legislation as follows:

Assured tenancies: eviction grounds to be discretionary

3(1)The Housing (Scotland) Act 1988 applies, in relation to a notice served on a tenant under section 19 or 33(1)(d) of that Act while this paragraph is in force, in accordance with the modifications in this paragraph.

(2)Section 18 (orders for possession) has effect as if—

(a)subsections (3) and (3A) were repealed,

(b)in subsection (4), for “Part II” there were substituted “Part I or Part II”,

(c)in subsection (4A), after the word “possession” there were inserted “on Ground 8 in Part I of Schedule 5 to this Act or”.

(3)Section 20 has effect as if subsection (6) (no discretion where landlord entitled to possession) were repealed.

(4)Section 33 (recovery of possession on termination of a short assured tenancy) has effect as if in subsection (1)—

(a)in the opening words, for the word “shall” there were substituted “may”,

(b)after paragraph (b), the word “and” were repealed,

(c)after paragraph (d) there were inserted “, and

(e)that it is reasonable to make an order for possession.”.

(5)Schedule 5 (grounds for possession of houses let on assured tenancies) has effect as if for the heading of Part I there were substituted “Certain grounds on which First-tier Tribunal may order possession in relation to the period of the Coronavirus (Scotland) Act 2020”.

The Tribunal now has to decide if it is reasonable to grant the eviction order.

The Tribunal were of the view in this case. that the Applicant had established a prima facie case for eviction and that the Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. Having considered that the Respondent had not responded to the Tribunal application, nor appeared at the CMD, the level of the arrears, the fact that they had accrued because the Respondent had not paid the amount he was due to pay over and above his housing benefit entitlement, and the fact that the arrears had been growing since 2018 and did not therefore appear to be as a result of the Coronavirus pandemic, it was reasonable to grant the order.

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.

01/03/2021

Alison Kelly
Legal Member/Chair

Date