



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/21/1049

Re: Property at 34 Woodside Terrace, Elgin, IV30 4AZ (“the Property”)

Parties:

Mr James Ramsay, Mrs Mary Ramsay, 68 McIntosh Drive, Elgin, Moray, IV30 6AW (“the Applicants”)

Miss Jacqueline Hewitson, Mr Scott MacKenzie, 34 Woodside Terrace, Elgin, IV30 4AZ (“the Respondents”)

Tribunal Members:

Lesley Johnston (Legal Member) and Leslie Forrest (Ordinary Member)

Decision (in absence of the Respondents)

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

Background

1. In this application the Landlords, James and Mary Ramsay (‘the Applicants’) seek an Order for possession of the property at 34 Woodside Terrace, Elgin, IV30 4AZ in terms of section 33 of the Housing (Scotland) Act 1988 (‘the Act’). The applicants have lodged a separate application for an Order for Payment of Rent arrears in respect of the same tenancy (Ref: FTS/HPC/CV/21/1050).
2. The Tenants at the property are Jacqueline Hewitson and Scott MacKenzie (‘the Respondents’).
3. The application is made in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 (‘the Rules’).
4. The application complies with the formal requirements of rule 66.

5. The Applicants lodged the following documents with the application:
 1. Lease dated 24 July 2014
 2. AT5 Notice dated 22 July 2014
 3. Redeacted bank statements relating to rental payments
 4. Notice to Quit dated 31 October 2020
 5. Section 33 Notice dated 31 October 2020
 6. Statement from Mr Ramsay re service of the Notices
 7. Screenshot of text message from the Respondent
 8. Section 11 Notice
 9. Copy email from Moray Council dated 13 My 2021 acknowledging receipt of section 11 Notice
 10. Rent statement to May 2021
 11. Updated rent statement to June 2021

The Case Management Discussion

6. The case called for a Case Management Discussion by telephone on 28 July 2021 at 10am along with the application for an Order for Payment.
7. The Applicants were personally present and unrepresented.
8. The Respondents were neither present nor represented.
9. The Tribunal was satisfied that notice of the hearing was effectively given to the Respondents, the application and notice of the hearing having been served by Sheriff Officers by way of personal service on 2 July 2021. Accordingly, the Tribunal was content to proceed in the Respondents' absence in terms of Rule 29.

Submissions by the Applicants

10. The Applicants submitted that the Order for Eviction should be granted.
11. The Applicants provided the background to the tenancy. The Applicants and Respondents entered into a short assured tenancy on 24 July 2014. All lease documentation was signed on that date. The AT5 Notice dated 22 July 2014 was issued on the Respondents on the same date.
12. The Applicants now wished to bring the lease to an end. A Notice to Quit and Section 3 Notice were served on the Respondents by the First Applicant placing a copy of same through the Respondents' letter box on 31 October 2020 in terms of which six months notice was provided to the Respondents. The Respondents acknowledged receipt on the same date. In that regard, the Applicants referred to a screenshot of a text message in terms of which the First Respondent acknowledged receipt:

“Hi we have received the notice to quit can I ask why u have issued us with this? As will need to tell the council why.”

13. The Applicants had responded to explain that they had a sudden change in family circumstances. They also enquired about when they could expect the rent due that month.
14. The First Respondent had communicated further with the Applicants at the end of the six-month period to advise that they had been in touch with the Council about alternative accommodation and the Council had advised that they should not remove from the tenancy until an Order had been obtained from the Tribunal. The Applicants responded to advise that they would be proceeding to the Tribunal.
15. The Applicants had heard nothing further from the Respondents and had not received any response/communication in light of the application to the Tribunal.
16. In relation to whether or not it was reasonable to grant the Order, the Applicants advised the Tribunal of the following in submissions and in response to questions from the Tribunal.
17. The Respondents reside together at the property with their three children aged around 6/7, 5 and 1/2. They are unaware if the Respondents are in receipt of state benefits. However, as far as the Applicants are aware the Respondents are not currently employed.
18. The Applicants had previously served a Notice to Quit in May last year. However, the Respondents, with assistance from the Council, persuaded the Applicants to enter into an agreement to pay £30 per month towards outstanding rent and to pay the ongoing rent timeously in exchange for which the Applicants agreed to withdraw the Notice to Quit.
19. However, the agreement was not adhered to and the Respondents continue to reside in the property without making payment of rent. The Applicants have attempted to engage with the Respondents, however, they rarely get any response to their correspondence. The Applicants had been reluctant to take this step and have tried their very best to be accommodating to the Respondents. However, they have reached the stage where the Respondents are not engaging and have not engaged with this process. The Applicants explained that their impression is that the Respondents are wanting to find alternative Council accommodation, but they cannot progress matters with the Council in the absence of an Order.

Findings in Fact

20. The Tribunal made the following findings in fact:

1. The Applicants are the heritable proprietors of the property at 34 Woodside Terrace, Elgin, IV30 4AZ.

2. By Lease dated 24 July 2014 the Applicants and the Respondents entered into a tenancy agreement in respect of the property.
3. The term of the lease was initially six months from 1 August 2014 to 1 February 2015 continuing on a monthly basis thereafter until ended by either party;
4. The AT5 Notice was served on the Respondents at the commencement of the tenancy
5. The Landlord served a Notice to Quit and Section 33 Notice on the Respondents on 31 October 2020. The Notices required the Respondents to give possession of the property from 1 May 2021.
6. A section 11 Notice was issued by the Applicants to Moray Council, receipt of which was acknowledged on 13 May 2021.
7. The application was made to the Tribunal on 2 May 2021
8. The Respondents have not removed from the property.

Reasons for Decision

21. The Tribunal is satisfied that the lease between the parties is a Short Assured Tenancy in terms of section 32 of the Act. That being the case, the Applicant may seek an Order from the Tribunal under section 33 of the Act.
22. In terms of section 33 of the Act (as amended by the Coronavirus (Scotland) Act 2020, the Tribunal shall make an order for possession of the property if the Tribunal is satisfied that:
 - (a) the short assured tenancy has reached its end;
 - (b) that tacit relocation is not operating;
 - (c) that the landlord has given to the tenant notice stating that he requires possession of the house; and
 - (d) that it is reasonable to make an order for possession.
23. The period of notice to be given under the Act is six months in terms of section 33(2)(ii).
24. The Tribunal is satisfied that the tenancy reached its end on 1 May 2021. Tacit relocation is not operating. The Notice to Quit and section 33 notice (of which the Respondents confirmed receipt) provided six months' notice.
25. The Tribunal is also satisfied that it is reasonable to grant the Order. The Respondents have not responded to the application made to the Tribunal and did not attend the hearing. The Applicants were candid in explaining what they knew of the Respondents' personal circumstances. While the Respondents

reside in the property with their three children and would appear not to be earning, the Tribunal has also considered that since January 2020 a significant amount of rent arrears have been accruing on the rent account and will continue to do so in the event the Order is not granted. The Tribunal has also considered that the Applicants have afforded the Respondents an opportunity to continue to reside in the property, withdrawing a previous Notice to Quit issued in May 2020 and have been reluctant to proceed with an application to the Tribunal. In addition, the Respondents are known to the Council and the Council is aware that they will require alternative accommodation, albeit those arrangements will only be made when an Order is granted by the Tribunal.

26. In all of those circumstances, the Tribunal considers that it is reasonable to grant the Order.

Decision

27. The Tribunal grants the 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.

28 July 2021

Legal Member/Chair

Date