



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/21/2143

Re: Property at Townhead of Greenock, Muirkirk, Cumnock, KA18 3NH (“the Property”)

Parties:

Mr Richard Tufnell, Witney house, Whitney lane, Leafield, Witney, OX29 9PG (“the Applicant”)

Mr Robert Clark, Townhead of Greenock, Muirkirk, Cumnock, KA18 3NH (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mrs E Williams (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. This is an application received in the period from 2nd September to 15th November 2021, made in terms of Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”) seeking an order for possession. The Applicant’s representative included with the application a copy of the short assured tenancy agreement between the parties, which tenancy commenced on 7th October 2016 at a monthly rent of £450, copy Section 11 Notice with notification of service on the local authority, copy Notice to Quit and Section 33 Notice dated and served 22nd December 2020, requiring the Respondent to quit the Property by 7th July 2021, and a rent statement.
2. Notification of the application and intimation of a Case Management Discussion set down for 27th January 2022 was served upon the Respondent by Sheriff Officer on 22nd December 2021.

Case Management Discussion

3. A Case Management Discussion (“CMD”) took place by telephone conference on 27th January 2022. The Applicant was not in attendance and was represented by Ms Marjorie Douglas of CKD Galbraith LLP. The Respondent was not in attendance.
4. The Tribunal considered the terms of Rule 17. The Tribunal determined that the Respondent had been given reasonable notice of the time and date of the CMD and that the requirements of Rule 17(2) had been satisfied and it was appropriate to proceed with the application in the absence of the Respondent.
5. Ms Douglas said the Applicant was seeking an order for possession of the Property. There has been no recent contact from the Respondent.
6. Responding to questions from the Tribunal regarding reasonableness, Ms Douglas said the Respondent lives alone at the Property. He is in full time employment and it was Ms Douglas’s understanding that his work had not been affected by Covid-19 and that he has worked continually throughout the pandemic. He has been sent numerous letters regarding rent arrears. The Respondent has paid no rent since August 2020 and the arrears are now £7650. It is understood that the Respondent does not heat or take care of the Property, which has caused damage. Extensive work is required to the Property and the Applicant is keen to carry out this work and re-let the Property. There has been no contact from the local authority.
7. The Tribunal adjourned to consider its decision. The Tribunal decided it was reasonable in all the circumstances to grant the order sought.

Findings in Fact and Law

8.
 - (i) Parties entered into a short assured tenancy agreement in respect of the Property that commenced on 7th October 2016.
 - (ii) Notice to Quit and Section 33 Notice dated 22nd December 2020, requiring the Respondent to quit the Property by 7th July 2021 was served on the Respondent on 22nd December 2020.
 - (iii) The short assured tenancy has reached its ish date.
 - (iv) The contractual tenancy terminated on 7th July 2021.
 - (v) Tacit relocation is not in operation.
 - (vi) The Applicant has given the Respondent notice that he requires possession of the Property.
 - (vii) It is reasonable to grant the order for possession.

Reasons for Decision

9. 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 he requires possession, and it is reasonable to make the order. The contractual tenancy has been terminated and tacit relocation is not in operation. The Applicant has given the Respondent notice that he requires possession of the Property. The Respondent did not appear at the CMD. In considering reasonableness, the Tribunal took into account the representations made on behalf of the Applicant regarding the Respondent's living circumstances, and the representations concerning the significant rent arrears and concern about the state of the Property. In all the circumstances, the Tribunal considered it reasonable to grant the order.

Decision

10. An order for possession of the Property is granted in favour of the Applicant under section 33 of the Housing (Scotland) Act 1988. The order cannot be executed prior to 12 noon on 2nd March 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.

H. F

Legal Member/Chair

27th January 2022
Date