



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/22/1146

Re: Property at 11 Dalziel Gait, Cambuslang, Glasgow, South Lanarkshire, G72 7UU (“the Property”)

Parties:

Mr Iftekhar Ahmed, 3/2 18 Carrington Street, Glasgow, Lanarkshire, G4 9AL (“the Applicant”)

Mr George McKenna, 11 Dalziel Gait, Cambuslang, Glasgow, South Lanarkshire, G72 7UU (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988

- Background
 1. An application was submitted to the Tribunal under Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a repossession order against the Respondent upon termination of a short assured tenancy agreement.
- The Case Management Discussion
 2. A Case Management Discussion (“CMD”) took place on 20 July 2022 by tele-conference. The Applicant was represented by Mr Napier of Jackson Boyd Lawyers. There was no appearance by or on behalf of the Respondent. The application had been intimated on the Respondent by Sheriff Officer delivery at the Property on 25 May 2022. The Tribunal was accordingly satisfied that the

Respondent had been duly notified of the date and time of the CMD and that the CMD could proceed in the Respondent's absence.

3. The Applicant's representative moved for the order for repossession to be granted as sought. The parties had entered into a Short Assured Tenancy Agreement. The Applicant had served a Notice to Quit and Notice in terms of section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") on the Respondent, on 20 September 2022 by Sheriff Officer. The Respondent had failed to remove from the Property. The Respondent is believed to have recently re-married and is only living in the Property a few days per week. His belongings are still in the Property. The Respondent has three children under the age of 16 years, who all live with their mother. The Respondent previously had his children staying with him at the Property at weekends, but the neighbours have advised the Applicant that this no longer appears to be happening.

4. It was submitted that it was reasonable to grant the order. The Respondent has accrued significant rent arrears. The Applicant was granted a payment order by the First-tier Tribunal in January 2022 in the sum of £7,200 in respect of rent arrears accrued by the Respondent. Nothing further has been paid since then, and further rent arrears of £6,000 have accrued. The Respondent is believed to be in employment as a manager of a restaurant in Glasgow, and it is believed that he has appropriate means to pay the rent, but that he is choosing not to. The Applicant has a mortgage over the Property and is having to cover payment of same whilst not receiving any rental income. The Applicant wishes to sell the Property.

- Findings in Fact

5. The Tribunal made the following findings in fact:

(i) The parties entered into a Short Assured Tenancy Agreement ("the Agreement") which commenced 31 March 2017. The Agreement stated that the tenancy is for a period of 12 months commencing on 31 March 2017 and expiring on 30 March 2018.

(ii) A Notice to Quit and notice under section 33 of the 1988 Act were served on the Respondent on 20 September 2021 by Sheriff Officer;

(iii) The Notice to Quit and notice under section 33 of the 1988 Act required the Respondent to remove from the Property by 30 March 2022;

(iv) The Respondent had failed to remove from the Property and continues to reside therein.

- Reasons for Decision

6. The Tribunal was satisfied that the terms of section 33 of the 1988 Act had been met: namely that the tenancy had reached its end; tacit relocation was not operating; a notice had been served in terms of that section giving at least 6 months' notice; and no further contractual tenancy was in existence. The Tribunal was also satisfied that it was reasonable to grant the Order in all the circumstances. The Respondent has accrued significant rent arrears and made no efforts to make payment for some time. The Applicant requires the benefit

of rental income to assist with his mortgage payments, and ultimately wishes to sell the Property. In the absence of any submissions made by the Respondent, the Tribunal was satisfied that the Applicant was entitled to the Order for Repossession as sought.

- Decision
7. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988.

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.

Fiona Watson



Legal Member/Chair

Date: 20 July 2022