



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/22/2112

Property: 34 South Guildry Street, Elgin IV30 1QN ("Property")

Parties:

Tom Cameron, 58 James Street, Lossiemouth IV31 6BY ("Applicant")

Cluny Estate Agents, 5 Thunderton Place, Elgin, Moray IV30 1BG. ("Applicant's Representative")

Rossana Elisiario 34 South Guildry Street, Elgin IV30 1QN ("Respondent")

Tribunal Members:

Joan Devine (Legal Member)

Elizabeth Dickson(Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("Tribunal") determined that an order for possession of the Property should be made and that execution of the Order should be delayed until 30 January 2023.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: Short Assured Tenancy Agreement dated 26 February 2017; AT5 signed by the Applicant and the Respondent dated 26 February 2017; Notice to Quit and Notice in terms of section 33 of the Housing (Scotland) Act 1988 ("1988 Act") both dated 22 April 2022 addressed to the Respondent; Royal Mail proof of delivery dated 23 April 2022; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 29 June 2022 and certificate of service by Sheriff Officer evidencing service of the Application on the Respondents on 15 August 2022.

Case Management Discussion ("CMD")

A CMD took place on 30 September 2022 at 2pm by conference call. In attendance for the Applicant was Charlie Beck of the Applicant's Representative. The Respondent was in attendance.

Mr Beck told the Tribunal that the Property had been a difficult one for the Applicant due to the repairs that need to be carried out. Mr Beck said that the Applicant wished to sell the Property. The Tribunal asked Mr Beck if the Applicant owned other properties which he let to third parties. Mr Beck said that the Applicant did own other properties but he did not know how many. He said that the Applicant's Representative looked after 3 properties for the Applicant.

The Respondent said that she was not opposing the Application. She said that she had lived in the Property for 5 years. She said that she had two children, one aged 11 and one aged 2. She said that she was very settled in the Property. She said that she had always paid her rent. She said that she was not in employment and was waiting to hear about an apprenticeship. She said that she had contacted the Local Authority and was on a homeless list but was not a priority. She said that she wanted a council house but there are few with 3 bedrooms.

She said that over 2 years ago she raised with the Applicant the need for repairs to be carried out to the Property. She said that she had raised the issue multiple times. She said that in March 2022 she made an application to the Tribunal seeking an order that the repairs be carried out. She said that an inspection was carried out and a hearing had taken place. The Applicant did not attend the hearing. She said that a new window, front door and cooker had been fitted but the stairwell had not been repaired. She said that the deadline to complete the repairs was 12 October 2022 but she understood that the Applicant was seeking an extension of time. She said that the stairs remained very wet. She had slipped on the stairs.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement dated 26 February 2017.
2. The Applicant and the Respondent had signed the form AT5 on 26 February 2017.
3. The tenancy was for the period 26 February 2017 to 26 August 2017 and unless terminated would continue thereafter on a month to month basis.
4. A Notice to Quit dated 22 April 2022 was served on the Respondent on 23 April 2022 stating that the tenancy would terminate on 26 June 2022.
5. A Notice in terms of Section 33 of the 1988 Act dated 22 April 2022 was served on the Respondent on 23 April 2022 stating that possession of the Property was required on 26 June 2022.

6. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003.

Reasons for the Decision

The Tribunal determined to make an Order for possession of the Property in terms of Section 33 of the 1988 Act. The Tribunal noted that the tenancy had been properly created as a short assured tenancy. The Tribunal noted that a Section 33 Notice and Notice to Quit had been served on the Respondent giving more than two months notice that the Applicant required possession of the Property. Having considered all of the circumstances, the Tribunal determined that it was reasonable to issue an eviction order but to delay execution of the Order until 30 January 2023. The delay in execution would allow the Respondent to progress discussions with the Local Authority regarding alternative accommodation and progress her application under the Housing (Scotland) Act 2006 regarding repairs to the Property.

Decision

The Tribunal grants an Order for possession of the Property on the basis that execution of the Order will be delayed for a period of four months.

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.

Joan Devine

Legal Member

Date : 30 September 2022