



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

Reference number: FTS/HPC/EV/22/2714

Order granted on 22 November 2022

Property: Malon, Berstane Road, Kirkwall, Orkney, KW15 1NA

Parties:

Edward Nicolson and Anne Nicolson residing together at Norlands, Berstane Road, Kirkwall, Orkney, KW15 1NA (“the Applicants”)

Roy Watts and Cynthia Watts residing together at Malon, Berstane Road, Kirkwall, Orkney, KW15 1NA (“the Respondents”)

Tribunal Members:

Paul Doyle (Legal Member)

Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) makes an order for possession of the Property in terms of section 33 of the Housing (Scotland) Act 1988.

Background

The Applicant sought recovery of possession of the Property in terms of Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Applicant had lodged with the Tribunal Form E. The documents produced were a Tenancy Agreement, a Notice to Quit and s.33 notice, both served on 28 January 2022, together with a notice under s.11 of the Homelessness (Scotland) Act 2003. A copy land certificate was lodged with the Tribunal which showed that the applicants are joint heritable proprietors of the Property.

Case Management Discussion

A case management discussion took place by telephone conference at 10am on 22 November 2022. The Applicants was represented by Mr G Laughton of Macleod & MacCallum, solicitors. Mr S Dunbar of Orkney CAB represented the respondents.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicants and the Respondents entered into a short-assured tenancy Agreement for the Property dated 31 July 2017. The lease initially ran from 1 August 2012 to 2 August 2013.
2. The initial rent in terms of the Tenancy Agreement was £470 per month.
3. The Tenancy Agreement set out the grounds on which the Landlord could seek recovery of possession of the Property in terms of Schedule 5 of the 1988 Act.
4. A notice to quit and a s.33 notice were served on the Respondent on 28 January 2022. The tenancy is a short-assured tenancy, and the respondents received the notice to quit and the s.33 notice timeously. The s.33 notice brought the tenancy to an end on 2 August 2022.
5. The Applicants sought recovery of possession of the Property in terms of s.33 of the Housing (Scotland) Act 1988 because the short-assured tenancy had been brought to an end on 2 August 2022 by the service of the s.33 notice.
6. The respondents have made an application to the local authority for housing. A property has been identified for them, but it will not be ready for them until 23 January 2023. The first respondent has mobility problems, and the local authority need time to adapt the identified property for his needs.
7. The respondents do not offer opposition to the application. They simply need a little more time to find alternative accommodation. The weight of reliable evidence indicates that it is reasonable to grant an order for repossession of the property, but to allow a little more time before an order for repossession can be enforced.
8. For the respondents, Mr Dunbar asked that the order for repossession should not be enforced before 23 January 2023. Mr Laughton did not oppose that request.
9. The respondent have no competent answer to the application for repossession.

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 tenancy was a short-assured tenancy. Correct notice was given which brought the short-assured tenancy to an end on 2 August 2022. The basis for possession set out in s.33 of the 1988 Act is established. The respondent offers no defence to the application. The finite time for occupancy of the property as a short-assured tenancy has come to an end. It is not unreasonable to grant an order for repossession to be enforced no sooner than 23 January 2023. For these reasons, the Tribunal determined to grant an Order for possession.

Decision

For the foregoing reasons, the Tribunal determined to make an 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.

22 November 2022

Legal Member