



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/22/4254

Re: Property at 467 Blackhill Road, Glasgow, G23 5NB (“the Property”)

Parties:

Caledonian Properties Limited, 2 The Cross Court, Bishopbriggs, G64 2RD (“the Applicant”)

Mr Ian Fyfe, 467 Blackhill Road, Glasgow, G23 5NB (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order

Background

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under section 33 of the Housing (Scotland) Act 1988. In support of the application the Applicant provided the following documentation:-
 - (i) Short Assured Tenancy Agreement between the parties dated 27 June 2017 and 20 July 2017 together with Form AT5;
 - (ii) Notice to Quit dated 26 August 2022 together with proof of service by Sheriff Officers;
 - (iii) Notice under section 33 of the Housing (Scotland) Act 1988 dated 26 August 2022 together with proof of service by Sheriff Officers;

- (iv) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Glasgow City Council.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was assigned for the 31st March 2023 to take place by teleconference due to the restrictions imposed by the Covid-19 pandemic. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondents by Sheriff Officers.
- 3 On 27 March 2023 the Applicant's representative submitted a rent statement showing arrears of £11,327 as at 2 March 2023.

Case Management Discussion

- 4 The Case Management Discussion took place by teleconference on 31st March 2023. The Applicant was represented by Mrs Jennifer Cochran. The Respondent was in attendance.
- 5 The Tribunal explained the purpose of the Case Management Discussion and the legal test and asked the parties to address it on their respective positions. For the avoidance of doubt the following is a summary of the submissions made and does not constitute a verbatim account of the discussion.
- 6 Mrs Cochran explained that the Applicant sought an eviction order under section 33 of the Housing (Scotland) Act 1988. A notice to quit and notice under section 33 of the said Act had been served on the Respondent and the tenancy had been brought to an end as at 1st November 2022, approximately six months ago. The Respondent had therefore had six months to find alternative accommodation. Mrs Cochran pointed out that the Applicant did not seek an order based on rent arrears, but it was a relevant consideration when looking at the reasonableness of making an eviction order. Mrs Cochran confirmed that the rent arrears were now more than £11,000 which represented 17 months unpaid rent. She further noted that the Cost of Living (Tenant Protection) (Scotland) Act 2022 would be relevant to the application and the Respondent would therefore have a further period of time in order to find a new property. In response to questions from the Tribunal Mrs Cochran advised that she was aware the Applicant had other properties they let but was not sure of the extent of their portfolio. The Applicant had been in regular contact with the Respondent throughout the tenancy via their agent Galbraith via emails as well as letters. The Respondent had the contact details for Galbraith. There were no other issues regarding the Respondent's conduct of the tenancy but the rent arrears had a major impact on his tenancy.
- 7 Mr Fyfe addressed the Tribunal. He outlined a history of issues with the property and his relationship with the Applicant's agent. There had been a

deluge of problems and the agent only seems to get in touch on a reactive basis when issues were raised. It often took several attempts to get matters addressed. He raised a number of examples including a recent rat infestation which had been reported but nothing was done until the problem intensified, dampness in the property which affected himself and his son, drainage issues with the front driveway and a front hedgerow which had posed a danger to occupants and had to be removed by him when Galbraith failed to do anything. The back garden was in a serious state of disrepair and he had previously injured himself when the steps fell apart. Mr Fyfe then addressed the issue of the rent arrears. He did not dispute that the arrears had accrued. He had not advised the Applicant's agent at any point that he was withholding his rent because of the issues he had outlined. He had been made redundant following the pandemic and had struggled to find employment which resulted in him starting a business. It had been a slow process trying to get back on his feet and it continued to be challenging. He had applied for social housing but the waiting lists were long and he did not have many points. He confirmed that he had previously applied for, and received, universal credit which included a housing element but the money was not enough to pay his rent and other expenses such as food and caring for his son. He had prioritised the latter as a result and rent was put on a backburner. He had previously entered into a payment arrangement with Galbraith but had continued to experience financial difficulties and he was becoming resentful due to the breakdown in the relationship with Galbraith.

- 8 Mr Fyfe then explained that he wished to move on from the property. He had received an offer of housing and hope to be able to vacate within the next few weeks. He wanted to leave as soon as possible. The Tribunal then sought clarification from Mr Fyfe as to whether he was opposing the application and he confirmed that he was not.

Relevant Legislation

- 9 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Housing (Scotland) Act 1988, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

“33 Recovery of possession on termination of a short assured tenancy.

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied—

- (a) that the short assured tenancy has reached its ish;*
b) that tacit relocation is not operating; and

(c)

(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and

(e) that it is reasonable to make an order for possession.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than six months, that period;

(ii) in any other case, six months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.”

The Cost of Living (Tenant Protection) (Scotland) Act 2022 is also relevant to this application, it having been received by the Tribunal after 28 October 2022.

Findings in Fact and Law

- 10 The Applicant entered into a Short Assured Tenancy Agreement with the Respondents the term of which was 2 August 2017 to 1 August 2018 and monthly thereafter.
- 11 The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 12 On 26 August 2022 the Applicant delivered a Notice under section 33 of the Housing (Scotland) Act stating that the Applicant required the property back by 1 November 2022 and a Notice to Quit to the Respondent which sought to terminate the tenancy as at that date. The Notice to Quit was in the prescribed form. The Notices were served by Sheriff Officers.
- 13 The Notice to Quit terminates the tenancy as at 1 November 2022 which is a valid ish date.
- 14 The monthly rent is £660.

- 15 The Respondent has accrued rent arrears in the sum of £11,237 as at 2 March 2023.
- 16 The Respondent previously received universal credit with a housing element but was unable to make payments towards the rent due to prioritising other expenses.
- 17 The Respondent resides in the property with his young son of school age.
- 18 The Respondent has obtained an offer for housing and has accepted same.
- 19 The Respondent wishes to remove from the property and does not oppose the application.
- 20 It is reasonable to make the order sought by the Applicant.
- 21 The provisions of section 33 of the Housing (Scotland) Act 1988 have been met.

Reasons for Decision

- 22 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved. The Respondent had confirmed that he did not oppose the application.
- 23 The Tribunal was satisfied that the Respondent had been served with a valid Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988. The issue for the Tribunal to determine therefore was whether it was reasonable in all the circumstances to grant an eviction order.
- 24 The Tribunal noted the level of arrears which had accrued over a prolonged period of time, which indicated that the Applicant had not taken the decision to terminate the tenancy lightly. The arrears were now significant and represented a lengthy period of unpaid rent by the Respondent. The Tribunal did have some sympathy with the Respondent's loss of employment and subsequent impact on his finances, but it noted that he had been in receipt of universal credit with a housing element and had still failed to make any payments, even partial payments, to his rent account. Whilst the Tribunal noted his account of the issues at the property, at no point had he put this to the Applicant as a reason for not paying the rent. He had not formally withheld his rent for that purpose.

- 25 The Respondent had however confirmed his intention to remove from the property and his offer of housing elsewhere. Accordingly, the Tribunal considered that in this particular case, taking into account the level of arrears and the Respondent's intentions, it would be reasonable to issue an eviction order.
- 26 It should be noted that this was an application to which the Cost of Living (Tenant Protection) (Scotland) Act 2022 applies. As at the time of writing this prevents any action being taken to enforce the eviction order prior the earlier of (a) the day following the end of a period of 6 months beginning with the day on which this order was granted as specified above, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 which is at the time of writing the 30 September 2023.
- 27 The decision of the Tribunal was unanimous.

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.

31 March 2023

Legal Member/Chair

Date