



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/22/4313

Re: Property at North Lodge, Fyvie, Turriff, Aberdeenshire, AB53 8JR (“the Property”)

Parties:

Sir George Forbes Leith, Tifty, Fyvie, Turriff, Aberdeenshire, AB53 8JT (“the Applicant”)

Mr William Lobban, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Janine Green (Ordinary Member)

Decision (in absence of the Respondent)

This Hearing was a Case Management Discussion fixed in terms of Rule 17 of the Procedure Rules and concerned an Application for Recovery of Possession on termination of a short assured tenancy under Section 33 of the Housing (Scotland) Act 1988. The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved. The purpose of the hearing was discussed.

Decision

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

Attendance and Representation

The Applicant was represented by Mr Aaron Doran, Raeburn Christie Clark and Wallace 12-16 Albyn Place, Aberdeen, AB10 1PS. Mr Doran had a trainee solicitor with him, namely, Rebecca Eason.

The Respondent was not present. An earlier Case Management Discussion was postponed due to a Sheriff Officer failed service and Service by Advertisement took place. There were no written representations.

Preliminary Matters

The Tribunal raised with the Applicant's representative if there had been any recent contact with the Respondent. He confirmed there had not been and there had been continuing efforts to engage with the Respondent to arrange for ongoing repairs to be tackled.

There were no other preliminary matters discussed.

Case Management Discussion

The Applicant's representative said that the Applicants sought recovery of the property in terms of Section 33 of the 1988 Act. He said there had been no contact with the Respondent for some time, the Tribunal Sheriff Officer service note confirmed that whilst mail was being picked up and rent paid the Respondent does not appear to be residing there as his main residence.

The Applicant's representative said that there is continuing significant disrepair in the property as repairs and access to same have not been able to be arranged with the Respondent. The Respondent when residing there lived alone and with no dependents. No vulnerabilities were noted.

The Applicant's representative explained that there had been multiple leases for this individual property on the estate and it was first on 6th November 1992 that the Respondent signed a lease for a date of entry 1st December 1992. The relevant AT5 notice was signed on 9th September 2004 before commencement of the lease which started 1st October 2004.

The most recent lease is lodged and the tenancy commenced on 1st October 2004. The submission was this met the requirements of a short assured tenancy and section 33 of the Act. A valid Notice to Quit with the correct termination date was issued with the lease terminating on the 30th November 2022. Further the Applicant's representative stated that the necessary 2 months notice was given and no tacit relocation was operating. The Notice to Quit was served by Sheriff Officers on 1st Sept 22. On 2nd September 2022 the necessary Section 11 notice was sent to the local authority.

On the question of reasonableness the Applicant's representative said that the Applicant sought to use a non-fault ground but the Respondent is in breach of the short assured tenancy terms. The Respondent continues to fail to allow access for maintenance and to repair. The property as a result has fallen into significant disrepair

and despite numerous requests for electrical inspections to take place also the Respondent has refused to provide access. The property is listed and becoming unsound. A window fell out 2 years ago and due to lack of access has only been able to be boarded up. The Respondent has refused to give authority for a repair and access. The concern is it is going to get worse. There is an ongoing refusal to engage. The landlord agent has tried to work with the Respondent and offered alternative accommodation. The Applicant's representative said an order was reasonable as on the available information the Respondent does not appear to reside in the property as his main residence despite maintaining rent.

Reasons for Decision

- 1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and to do so would be in the interests of the parties, in the interests of justice and having regard to the Overriding objective. The Respondent had notified by Service by Advertisement and no representations had been received. The Tribunal was in receipt of all necessary information and submissions to make a decision.**
- 2. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property.**
- 3. The Tribunal was satisfied that the tenancy was in terms of Section 32(1) of the 1988 Act, a short assured tenancy for not less than 6 months and in relation to which a prescribed notice namely a valid AT5 had been served before creation of the short assured tenancy.**
- 4. In terms of Section 33 of the 1988 Act the Tribunal considered that the Short Assured Tenancy had reached its ish.**
- 5. Further the Tribunal was satisfied that no tacit relocation was operating, no further contractual tenancy was in existence and a valid Notice to Quit had been served by Sheriff Officer on the Respondent terminating the tenancy with the necessary notice given to the Respondent.**
- 6. The Tribunal noted the Local Authority under the 2016 had been notified.**
- 7. The Tribunal spent some time looking at reasonableness. It noted that the property has been in disrepair and potentially not wind and watertight due to a lack of access given by the Respondent. There had been ongoing lack of gas safety checks and the property is falling further into disrepair. The Respondent appears not to reside in the property as his main residence, has no dependents or vulnerabilities known. The Applicant has a genuine concerns over the repairs of the property and the fact it is a listed building. The Applicant has engaged agents and solicitors to try to engage with the Respondent without success. In all the circumstances the Tribunal found an Order in its discretion was reasonable in terms of the Coronavirus (Scotland) Act 2020.**
- 8. The Application will be affected by the Cost of Living (Protection for Tenants)(Scotland) Act 2022 and the order cannot be enforced in accordance with same.**

9. Accordingly, in terms of Section 33 of the 1988 Act the Tribunal granted an order against the Respondent for possession of the Property.

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.

Karen Kirk

Legal Member/Chair

28th April 2023
Date