



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/22/1718

Re: Property at 148 Glenburn Gardens, Whitburn, EH47 8NW (“the Property”)

Parties:

Mr Mohammed Afzal, Suite 129 Eucal Business Centre, Craigshill Road, Livingston, EH54 5DT (“the Applicant”)

Ms Stacey Crawford, 148 Glenburn Gardens, Whitburn, EH47 8NW (“the Respondent”)

Tribunal Members:

Alison Kelly (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 for eviction should be granted.

On 7th June 2022 the Applicant lodged an Application with the Tribunal under Rule 65 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property. The application sought to evict the respondent in terms of both sections 18 and 33 of the Housing (Scotland) Act 1988.

Lodged with the application were: -

1. Copy Tenancy Agreement with an initial period of 3rd November 2017 to 3rd May 2018 and monthly thereafter;
2. AT5 dated 3rd November 2017
3. AT6
4. Section 33 Notice
5. Notice to Quit;

6. Section 11 Notice;

The Application was served on the Respondent by Sheriff Officers on 26th July 2022.

On 3^{1st} August 2022 the Applicant lodged a further document, being an updated rent statement.

Case Management Discussion

The Case Management Discussion (“CMD”) took place by teleconference. The Applicant represented by Mr Maguire of Allcourt Solicitors Ltd There was no attendance by the Respondent or any representative on her behalf.

The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules.

The Chairperson pointed out that the Application contained cases under both sections 18 and 33 of the Housing (Scotland) Act 1988. Mr Maguire was asked to chose which case he wished to move before the Tribunal. He opted for the case under section 33 and the Tribunal permitted him to amend the Application to proceed under Rule 66 rather than Rule 65.

The tribunal were satisfied that the notices had been served timeously and correctly. It was therefore for the Applicant to establish, in terms of the changed made by the Coronavirus (Scotland) Act 2020, that it was reasonable to grant the order.

Mr Maguire submitted that it was reasonable as the rent arrears currently stood at £12,675. The monthly rent was £650. Mr Maguire said that the Respondent was in receipt of Universal Credit, including a housing element. Universal Credit refused to pay to the Applicant direct, and the Respondent had not made payment to the Applicant of the Housing element. The Applicant had attempted to contact the Respondent on a number of occasions, but she refused to engage.

Mr Maguire did not know if the Respondent lived in the property with any children. He did say that the Applicant had heard locally that the respondent had vacated the property. A neighbour had not seen her for about 10 days, and the local shopkeeper had been told by the Respondent that she was leaving. The Applicant had looked in the window at the property and it appeared to be empty of possessions. He was wary about entering without an eviction order.

Findings in Fact

1. The parties entered into a Tenancy Agreement in respect of the property;
2. The rent was £650 per month;
3. Notice to quit and Section 33 Notice had been served on the Respondent;
4. The correct notice period in terms of the amendments made to the housing (Scotland) Act 1988 by the Coronavirus (Scotland) Act 2020 has been given;
5. This Application was served on the Respondent by Sheriff Officer on 26th July 2022;

6. The rent arrears were £12,675;
7. The respondent was in receipt of Universal Credit and had not paid the Housing element to the Applicant.

Reasons for Decision

The Tribunal were satisfied that the ground of eviction had been established.

It is usually mandatory to grant an application under section 33 of the Housing (Scotland) Act 1988 provided that notices have been served correctly. However, Section 2 and Schedule 1 of the Coronavirus (Scotland) Act 2020 amended the legislation as follows:

3(1)The Housing (Scotland) Act 1988 applies, in relation to a notice served on a tenant under section 19 or 33(1)(d) of that Act while this paragraph is in force, in accordance with the modifications in this paragraph.

(2)Section 18 (orders for possession) has effect as if—

(a)subsections (3) and (3A) were repealed,

(b)in subsection (4), for “Part II” there were substituted “ Part I or Part II ”,

(c)in subsection (4A), after the word “possession” there were inserted “ on Ground 8 in Part I of Schedule 5 to this Act or ”.

(3)Section 20 has effect as if subsection (6) (no discretion where landlord entitled to possession) were repealed.

(4)Section 33 (recovery of possession on termination of a short assured tenancy) has effect as if in subsection (1)—

(a)in the opening words, for the word “shall” there were substituted “ may ”,

(b)after paragraph (b), the word “and” were repealed,

(c)after paragraph (d) there were inserted “, and

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

(5)Schedule 5 (grounds for possession of houses let on assured tenancies) has effect as if for the heading of Part I there were substituted “ Certain grounds on which First-tier Tribunal may order possession in relation to the period of the Coronavirus (Scotland) Act 2020 ”.

The Tribunal now has to decide if it is reasonable to grant the eviction order. The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Tribunal found it reasonable to grant the order. The Respondent was in receipt of Universal Credit but had not passed on the housing element to the Applicant. She had not responded to attempts to contact and the arrears stood at £12675, which equates to over 19 months in arrears.

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.

Alison Kelly

Legal Member/Chair

2nd September 2022

Date