

Housing and Property Chamber
First-tier Tribunal for Scotland



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/21/2739

Re: Property at 36 Keir Hardie Drive, Kilbirnie, KA25 6BD ("the Property")

Parties:

Mr Benjamin Kester Fernando, 2a Princes Street, Ardrossan, KA22 8GA ("the Applicant")

Miss Leah Ramsay or Sneddon, 36 Keir Hardie Drive, Kilbirnie, KA25 6BD ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

At the Case Management Discussion ("CMD"), which took place by telephone conference on 22 March 2022, the Applicant was in attendance and was represented by Ms M McDiarmid of Hovepark Lettings, 56 Hamilton Street, Saltcoats, KA21 5DS. The Applicant's wife, Mrs Suzanne Fernando, was also in attendance.

The Respondent was neither present nor represented.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") had been satisfied relative to the Respondent having received notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29.

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that:-

Background

The following facts were noted by the Tribunal:-

- i. That the Applicant is the heritable proprietor of the Property.
- ii. That on 10 and 27 February 2015 the Applicant leased the Property to the Respondent in terms of a Short Assured Tenancy Agreement ("the Tenancy Agreement").

- iii. That in terms of the Tenancy Agreement the initial term of the tenancy was from 27 February 2015 to 28 August 2015 and the tenancy continued thereafter on a month to month basis.
- iv. That the rent payable by the Respondent to the Applicant in terms of the Tenancy Agreement is £450 per calendar month.
- v. That on 21 April 2021, on the instructions of the Applicant, Hovepark Lettings served on the Respondent by recorded delivery post a Notice under Section 33 of the Housing (Scotland) Act 1988 together with a Notice to Quit requiring the Respondent's removal from the Property on or before 27 October 2021.

The CMD

a) At the CMD Ms McDiarmid for the Applicant made the following representations:-

- i. That the Respondent remains in occupation of the Property.
- ii. That payment of rent by the Respondent is almost up to date with only the February payment remaining outstanding.
- iii. That the Applicant and the Respondent know each other and, prior to service of the Section 33 Notice and Notice to Quit, the Applicant and the Respondent discussed directly the Applicant's intention to sell the Property.
- iv. That the Respondent engaged with the Hovepark Lettings, had intimated that she was trying to find alternative accommodation and had applied to the local authority for such accommodation.
- v. That the last contact between Ms McDiarmid and the Respondent had taken place by telephone call when notification of the hearing date in this application had been received. The Respondent again intimated that her search for alternative accommodation had been unsuccessful but no challenge to the Notices served was made.
- vi. That the Respondent occupies the property with her two children who are both of school age and believed to be around 10 and 7 years old respectively.
- vii. That the Respondent's rent is substantially paid by state benefits.
- viii. That the Respondent does not have any partner living with her.
- ix. That the Respondent is not understood to be in employment.
- x. That the Applicant is not a commercial landlord and has no other rented properties.

b) At the CMD the Applicant made the following representations on his own behalf:-

- i. That the Property was previously the family home from which the Applicant and his family removed in around June 2010 and which has been rented out since then.
- ii. That the Applicant and his wife are living in a rented property which they are in the course of purchasing from their landlord. They have lived there for around 10 years.
- iii. That the Applicant has been diagnosed with terminal cancer and wishes to get his affairs in order. In that connection the Applicant wants his family to have secure accommodation in which to live with no worries about renting or any mortgage.
- iv. That the purchase of the property which the Applicant and his wife are presently renting is dependent upon receiving the proceeds of sale of the Property. The purchase cannot be achieved without the sale of the Property.
- v. That the Property has been on the market for sale since June 2021 and an offer to purchase has been received. The potential purchasers are waiting on the tenancy issue being resolved in order to agree a date of entry.

- vi. That the Applicant spoke directly to the Respondent in April 2021 and provided to her information relative to his situation. At that time his cancer diagnosis was not known to be terminal but he has spoken to her subsequently to make her aware of the position.
- vii. At no time has the Respondent resisted the Applicant's request to recover possession of the Property. The parties have enjoyed a very good relationship albeit that relationship is now more strained. The Respondent remains in occupation of the Property and whilst she hasn't always paid her rent on time, only the February 2022 rent remains outstanding.
- viii. The Respondent has advised that the Council told her to stay in occupation of the Property meantime and she has nowhere else to go.

The Applicant therefore seeks an eviction order.

Findings in Fact

- i. The Applicant is the heritable proprietor of the Property.
- ii. On 10 and 27 February 2015 the Applicant leased the Property to the Respondent in terms of a Short Assured Tenancy Agreement ("the Tenancy Agreement").
- iii. In terms of the Tenancy Agreement the initial term of the tenancy was from 27 February 2015 to 28 August 2015 and the tenancy continued thereafter on a month to month basis.
- iv. The rent payable by the Respondent to the Applicant in terms of the Tenancy Agreement is £450 per calendar month.
- v. On 21 April 2021, on the instructions of the Applicant, Hovepark Lettings served on the Respondent by recorded delivery post a Notice under Section 33 of the Housing (Scotland) Act 1988 together with a Notice to Quit requiring the Respondent's removal from the Property on or before 27 October 2021.
- vi. The Respondent remains in occupation of the Property.
- vii. The Notice of these proceedings has been given by Hovepark Lettings to North Ayrshire Council in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 on 5 November 2021.
- viii. The Property used to be the family home of the Applicant and his wife from which they removed in around 2010.
- ix. The Applicant is not a commercial landlord and has no other rented properties.
- x. The Applicant has been diagnosed with terminal cancer and wishes to put his affairs in proper order, in particular by giving his family secure accommodation that is neither rented nor the subject of a mortgage.
- xi. The Applicant requires possession of the Property to enable the Property to be sold and to enable the proceeds of sale to be used to purchase the rented property in which the Applicant and his wife presently reside.
- xii. The Applicant has a buyer for the Property.
- xiii. The Applicant has agreed with his landlord the purchase of the rented property.
- xiv. It is reasonable that an eviction order be granted in favour of the Applicant.

Reasons for Decision

In the absence of the Respondent, the factual background was not in dispute.

Given the Applicant's health diagnosis it is reasonable that he would want to put his affairs in order and have the peace of mind knowing that his wife and family have secure

accommodation in which to live that is neither rented nor subject to a mortgage. This can only be achieved by the Property being sold. The Applicant has agreed to purchase the rented property in which he and his wife live. He requires the funds to do so. These funds can be raised by selling the Property. He has no other means to purchase the Property outright. He has a purchaser for the Property, the Property having been marketed for sale since around June 2021.

The Tribunal considered whether or not it would be reasonable to grant an eviction order and determined that it would be reasonable to grant an eviction order in the circumstances.

Decision

The Tribunal granted an eviction order in favour of the Applicant

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.

Gillian Buchanan
Legal Member/Chair

22 March 2022
Date