



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/22/1477

Property: Flat 1/1, 28 Abbey Drive, Jordanhill, Glasgow G14 9JX ("Property")

Parties:

Murdoch MacDonald, 4 Branklyn Crescent, Glasgow G13 1GJ ("Applicant")

Bannatyne Kirkwood France & Co, 16 Royal Exchange Square, Glasgow G1 3AG ("Applicant's Representative")

Lorraine Black, Flat 1/1, 28 Abbey Drive, Jordanhill, Glasgow G14 9JX ("Respondent")

Tribunal Members:

**Joan Devine (Legal Member)
Melanie booth Ordinary Member)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("Tribunal") determined that an order for possession of the Property should be made.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were:

- Short Assured Tenancy Agreement between the Parties in respect of the Property dated 4 March 2003 for a period of 12 months from 4 March 2003 and AT5 signed by the Applicant and the Respondent dated 4 March 2003;
- The first and last page of a Short Assured Tenancy Agreement between the Parties in respect of the Property dated 16 February 2017 for a period of 12 months from 4 March 2017 and containing acknowledgement of receipt of form AT5;

- Short Assured Tenancy Agreement between the Parties in respect of the Property dated 26 February 2018 for the period 4 March 2018 to 4 September 2018 and month to month thereafter and AT5 signed by the Applicant and the Respondent dated 25 February 2018;
- Notice to Quit and Notice in terms of section 33 of the Housing (Scotland) Act 1988 ("1988 Act") both dated 5 November 2021 addressed to the Respondent;
- Sheriff Officer certificate of service evidencing service of the Notice to Quit and Notice in terms of section 33 of the 1988 Act on 5 November 2021;
- Notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 18 May 2022 and
- Certificate of service by Sheriff Officer evidencing service of the Application on the Respondent on 6 July 2022.
- Email from the Applicant's Representative dated 29 July 2022 in which it was stated that the Applicant intended to sell the Property if possession was obtained and attached letter from Bank of Ireland to the Applicant dated 20 June 2013 confirming a payment of £15,374 towards the mortgage over the Property and letters from Archibald Sharp to the Applicant dated 5 and 9 May 2022 in which they confirmed they would act as estate agent to market the Property and would provide a valuation.

A Case Management Discussion ("CMD") was fixed regarding the Application for 12 August 2022. By email dated 03 August 2022 Latta & Co, Solicitors advised the Tribunal that they were acting for the Respondent in connection with housing matters. By email dated 9 August 2022 Latta & Co, advised the Tribunal that they were no longer acting for the Respondent. At the request of the Respondent, the CMD scheduled for 12 August 2022 was postponed until 25 October 2022.

By email dated 16 August 2022 the Respondent asked for the Application to be put on hold until such time as she obtained representation. By letter dated 30 August 2022 the Tribunal told the Respondent that it was not necessary for the Respondent to be represented at a CMD. In an email dated 01 September 2022 the Respondent stated that without representation she was unable to participate in any conference or meetings. She said that she had obtained legal advice that she did require to be represented. She said that it was the sole responsibility of the Tribunal that she was without representation as the Tribunal had written to her previous lawyer and coerced them. She said that she had been advised "by those high up in authority that we can take action after any decision as it won't be a fair trial etc".

The Tribunal issued a Direction dated 15 September 2022 in terms of which the Respondent was required to lodge by 07 October 2022:

1. A written representation setting out, in chronological order, the steps taken by the Respondent to obtain representation regarding the application in the period 09 August 2022 to date.
2. Any documentation held by the Respondent evidencing the steps taken by her to obtain representation for the CMD fixed for 25 October 2022.
3. Any documentation held by the Respondent evidencing the allegation of coercion made in the Respondent's email of 01 September 2022.

The Respondent did not comply with or respond to the Direction.

Case Management Discussion ("CMD")

A CMD took place on 25 October 2022 by conference call. In attendance for the Applicant was Alexandra Wooley as the Applicant's Representative. Heather MacDonald attended as an observer. The Respondent was not in attendance.

Ms Wooley told the Tribunal that the Applicant wished to sell the Property to release funds to repay the mortgage over the Property and to fund a new business being set up by the Applicant's son. Ms Wooley said that the Property had been purchased as an investment for the Applicant's son who was currently finishing university. She referred to the letter from Bank of Ireland which referred to a sum being paid towards the mortgage. She said that this sum represented accumulated gifts given to the Applicant's son then invested in the Property. She referred to the letters from Archibald Sharp who had been engaged to market the Property.

Ms Wooley told the Tribunal she understood that the Respondent lived alone in the Property. She said she understood that she was not in employment. She said that the rent was not in arrears. She understood that the Respondent had a number of health issues, but she could not provide any detail. The Tribunal asked if there had been recent contact between the Parties. Ms Wooley said that there had not and that relations between the Parties were acrimonious.

The Tribunal adjourned to consider whether it was reasonable to grant an order for eviction. The Tribunal reconvened following the adjournment.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement for a period of twelve months from 4 March 2003.

2. The Applicant and the Respondent had entered into a tenancy agreement for a period of twelve months from 4 March 2017.
3. The Applicant and the Respondent had entered into a tenancy agreement dated 26 February 2018 for the period 4 March 2018 to 4 September 2018 and unless terminated would continue thereafter on a month to month basis.
4. The Applicant and the Respondent had signed the form AT5 on 25 February 2018.
5. A Notice to Quit dated 05 November 2021 was served on the Respondent on 05 November 2021 stating that the tenancy would terminate on 04 February 2022.
6. A Notice in terms of Section 33 of the 1988 Act dated 5 November 2021 was served on the Respondent on 05 November 2021 stating that possession of the Property was required on 07 May 2022.
7. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003.

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 Tribunal noted that the tenancy had been properly created as a short assured tenancy. The Tribunal noted that a Section 33 Notice and Notice to Quit had been served on the Respondent giving more than two months notice that the Applicant required possession of the Property. Having considered all of the circumstances, and in the absence of a submission from the Respondent, the Tribunal determined that it was reasonable to issue an eviction order

Decision

The Tribunal grants an Order 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.



Legal Member: Joan Devine

Date : 25 October 2022