



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/21/0080

Re: Property at 4 Stewart Place, Carluke, ML8 5SR (“the Property”)

Parties:

Mrs Joyce Brown, 16 Lake Avenue, Lanark, ML11 9BQ (“the Applicant”)

Mr Steven Galloway, 4 Stewart Place, Carluke, ML8 5SR (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Elizabeth Currie (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 possession should be granted.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction should be granted

Background

1. This was a case management discussion to consider the application made by the Applicant dated 11th January 2021 for an order for repossession of the Property in terms of Rule 66 of the Tribunal Rules. The CMD took place by teleconference as a result of the current requirement for social distancing.
2. The Applicant is the Landlord in a Short Assured Tenancy with the Respondent who is the tenant. The Applicant has title and interest by virtue of owning the property.

3. The Applicant was present on the teleconference herself the Respondent did not attend but intimation of the proceedings had been served on him by sheriff officer dated 4th February 2021.
4. The Applicant had lodged and the Tribunal had sight and considered the following documents:-
 - a. Application for repossession dated 11th January 2021
 - b. Copy Tenancy Agreement for the Property dated 4th May 2016
 - c. Copy AT5 Notice dated 4th May 2016 at 11.10
 - d. Notice to Quit dated 29th June 2020 giving notice to leave by 4th January 2021
 - e. S33 Notice dated 29th June 2020
 - f. Execution of service by sheriff officer dated 29th June 2020
 - g. S11 notice to South Lanarkshire Council dated 12th January 2021 and confirmation form the Council of receipt of the notice.
 - h. Response to a direction from the Tribunal confirming that the Applicant had complied with the Rent Arrears Pre –Action Requirements Coronavirus (Scotland) Regulations 2020 together with numerous copy letters and e-mails to the Respondent from the Applicant's agent over several months advising of the rent arrears, providing information on where to seek advice and assistance and asking him to contact them to discuss or come to an arrangement.

The Discussion

5. The Legal Member explained the purpose of the CMD and advised that the Tribunal could do anything at a case management discussion which it may do at a hearing.
6. The Applicant attended and was not represented. The Tribunal waited an additional 10 minutes but the Respondent did not attend and was not represented.
7. The Applicant explained that she was seeking an order for possession today. She advised that apart from the first few months of the tenancy the tenant has been consistently late in payment of his rent, and the last payment was in June 2020 but he has not paid anything since. She explained that her agents Remax have written and phoned the Respondent on numerous occasions and he has not responded to any attempts to discuss the rent after being told in July that the landlord would not withdraw the notice to quit and S33 notice. She believes he applied for Universal Credit but despite attempts by Remax to have any universal credit paid directly she confirmed that they had not been paid any and were indeed told on one occasion by Universal Credit that there was no money to be given them.
8. The Applicant advised that the rent arrears have increased since she made the application and now stand at £3621.10. She also advised that one small payment from Universal Credit was unexpectedly received last week of £15.19

but there is no covering letter or explanation with it. The current rent arrears include a deduction of that sum. She moved the Tribunal to grant the order today because the tenant is now in substantial arrears and has made no contact whatsoever to discuss the situation with her or her agents despite numerous attempts to engage him.

Findings in Fact

9. The Applicant and Respondent have entered into a short assured tenancy of the Property for a period of 6 months from 4th May 2016 to 4th November 2016.
10. The Applicant is the Landlord and served a Form AT5 on the Respondent who is the Tenant prior to the creation of the tenancy.
11. The Tenancy is a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988.
12. The rent is £ 425 per calendar month.
13. The Applicant has served by sheriff officer, a Notice to quit and S33 notice on the Respondent terminating the contractual tenancy and giving 6 months' notice that they required possession of the Property by 4th January 2021 being a termination date of the tenancy.
14. The Respondent who is the tenant has not vacated the property or responded to the Notice to Quit or S33 notice.
15. The Respondent has been served notice of this application and has made no legal or factual representations in relation to this Application.
16. A s11 notice in terms of the Homelessness etc. (Scotland) Act 2003 was served on the Local Authority on 12th January 2021

Reasons for Decision

17. The Applicant has entered into a Short Assured Tenancy with the Respondent.
18. S33 of the Act says "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 for Scotland may make an order for possession of the house if it is satisfied-
 - a) That the short assured tenancy has reached its end
 - b) That tacit relocation is not operating
 - c) That no further contractual tenancy is for the time being in existence and
 - 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.

The period of notice required to be given under S33 (1) (d) above is six months, in accordance with the legislation as amended.

19. The Short Assured tenancy has reached its end, tacit relocation is not operating and there is no further contractual tenancy in existence, so the Applicant having given adequate notice in terms of S33 above, can and has applied to repossess the Property. However since April 2020 and Section 2 and Schedule 1 of the Coronavirus (Scotland) Act 2020, there has been a change to the law on repossessions and before an order for possession is granted the Tribunal has to be satisfied that it is reasonable to grant the order.

20. The Tribunal considered carefully the submissions from the Applicant and the written evidence it had before it. The Tribunal accepted the submission from the Applicant that the tenant has a history of late payments, stretching back to September 2016, that he did not initially pay the rent due in May 2020 and his last payment was made on 30th June 2020 when he paid the rent due for May and part of June's rent but has not paid anything since and the rent due and outstanding on 11th January when she made the application is £2,961.76. The Applicant has lodged copies of numerous letters from her agents Remax to the Respondent asking him to make contact to discuss the rent arrears and providing the Respondent with information of where he can get advice and support. Ms Brown advised that she would be willing to discuss a payment plan with him but that he has not communicated at all with Remax with regard to rent arrears although he has let tradesmen in to deal with urgent repairs. She confirmed that this has been very frustrating and difficult for her and she has not seen the Property for nearly a year as well as having the arrears build up.

21. The Tribunal is able to make any order at a case management discussion as it can after a Hearing. The Respondent has not made any written representations nor has he attended this CMD so there are no representations by him that the Tribunal can take into account. Given the history of late payments, and the amount and length of time the rent arrears have accrued and the fact that there has only been a small amount of universal credit housing costs paid very recently and that the Applicant's agent had previously tried to get housing benefit paid direct to them and were advised there was no money to be paid the Tribunal is satisfied it is reasonable to grant the order for eviction.

22. In the absence of any submissions by the Respondent that it would not be reasonable to grant an order for eviction, and balancing the interests of both parties the Tribunal found it was reasonable to grant an order for repossession at this CMD and that a hearing is not required.

Decision

An order for eviction was granted.

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.

Jan Todd

8 March 2021

Legal Member/Chair

Date