



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 Housing (Scotland) Act 1988 (“the 1988 Act”)

Chamber Ref: FTS/HPC/EV/21/1884

Re: Property at 44 Whitlees Court, Ardrossan, KA22 7PD (“the Property”)

Parties:

Mr Christopher Baillie, Mr Terry Fulton, 41 Kingsdown Road, Walmer, Deal, Kent, CT14 8BN (“the Applicants”)

Miss Nicola Dudgeon, 44 Whitlees Court, Ardrossan, KA22 7PD (“the Respondent”)

Tribunal Members:

**Josephine Bonnar (Legal Member)
Jane Heppenstall (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 against the Respondent in favour of the Applicants.

Background

1. By application dated 5 August 2021, the Applicants seeks an order for possession of the property in terms of Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”) A tenancy agreement, AT5 notice, copy Notice to Quit, Section 33 Notice and Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 were lodged in support of the application.
2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer on 23 September 2021. Both parties were notified that a Case Management Discussion (“CMD”) would take place on 26 October 2021 at 11.30 am and that they were required to participate. Both were

provided with a telephone number and passcode.

3. The CMD took place by telephone conference call on 26 October 2021 at 11.30am. The Applicant was represented by Ms McDiarmid. The Respondent did not participate and was not represented. She did not lodge any written representations in advance of the CMD.

Case Management Discussion

4. Ms McDiarmid advised the Tribunal that there has been no recent contact from the Respondent, but she is still in occupation of the property. The Tribunal noted that the Applicants have submitted a copy of a short assured tenancy agreement and AT5 notice. A copy of a Notice to Quit and Section 33 Notice have also been lodged, together with a post office receipt and Royal Mail track and trace report confirming delivery on 30 January 2021. Ms McDiarmid confirmed that the Notices were sent together, in the same envelope, on 29 January 2021. A Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 was also submitted.
5. Ms McDiarmid advised the Tribunal that her company has managed the property for the Applicants since 2010. They bought it as a buy to let investment. They notified the letting agents that their mortgage term was coming to an end and that they wished to sell the property. Following receipt of these instructions, Ms McDiarmid told the Respondent of the Applicants' plans and arranged for service of the Notices. Since that time there have been issues with the tenancy. Although there had been late rent payments throughout the tenancy, this has escalated over the last few months. A payment order was issued by the Tribunal in July 2021, in connection with the arrears. Currently, direct payments from Universal Credit are being made, but these do not cover the rent charge. The Respondent currently owes about £3500. In addition, she has failed or refused to provide access for inspection of the property. On visits to the property to seek access, the letting agency staff have also noted that there are now several dogs at the property, which is not permitted. Ms McDiarmid advised the Tribunal that the Respondent is understood to have three children, including a baby. They have no information about any health issues affecting the family. The letting agents have made several attempts to contact the Respondent, by email, text, and phone, but without success.
6. Ms McDiarmid advised the Tribunal that the Applicants reside in England. Their bed and breakfast business has been affected by the pandemic and the loss of rental revenue from the property has added to their financial difficulties. Selling the property has become a priority, although they will require to carry out some work before marketing it for sale. Ms McDiarmid stated that she is not aware of the Applicants owing other rental properties, as this is the only one managed by her company.

Findings in Fact

7. The Applicants are the owners and landlords of the property.
8. The Respondent is the tenant of the property in terms of a short assured tenancy agreement dated 3 June 2015.
9. The Applicants served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondent on 29 January 2021.
10. The Respondent resides at the property with three children and several dogs. She has incurred rent arrears and has failed to provide access for inspection of the property.
11. The Applicants intend to sell the let property.

Reasons for Decision

12. The application was submitted with a short assured tenancy agreement and AT5 Notice. The term of the tenancy 3 June 2015 until 3 December 2015 with a provision that it continues on a month to month basis thereafter. The AT5 Notice is signed and dated by the Respondent, on the same date as the tenancy agreement.
13. Section 32 of the 1988 Act states “(1) A short assured tenancy is an assured tenancy - (a) which is for a term of not less than 6 months; and (b) in respect of which a notice is served as mentioned in subsection (2) below. (2) The notice referred to in subsection (1)(b) above is on which – (a) is in such form as may be prescribed; (b) is served before the creation of the short assured tenancy; (c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under the tenancy; and (d) states that the assured tenancy to which it relates is to be a short assured tenancy.”
14. The Tribunal is satisfied that the tenancy agreement between the parties was for an initial term of 6 months and therefore meets the requirements of Section 32(1) of the 1988 Act. The Tribunal is also satisfied that AT5 Notice was given to the Respondent prior to the creation of the tenancy. In the circumstances, the Tribunal determines that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act.
15. From the documents submitted with the application, and the information provided at the CMD by the Applicant’s representative, the Tribunal is satisfied that the Applicant’s letting agent sent the Notice to Quit and Section 33 Notice to the Respondent on 29 January 2021, by recorded delivery post. It was delivered on 30 January 2021. The Notice to Quit calls upon the Respondent to vacate the property on 3 February 2021, being an ish date. It contains the information prescribed by the Assured tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and complies with the terms of

Section 112 of the Rent (Scotland) Act 1984. The Tribunal is satisfied that the Notice to Quit is valid and that the tenancy contract has been terminated. The Tribunal also notes that the Applicants have provided a copy of the Section 11 Notice sent to the Local Authority and have therefore complied with Section 19A of the 1988 Act.

16. Section 33 of the 1988 Act, as amended by the Coronavirus (Scotland) Act 2020 states “(1) 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 may make an order for possession of the house if the Tribunal is satisfied – (a) that the short assured tenancy has reached its finish; (b) that tacit relocation is not operating; (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” Subsection 2 states “The period of notice to be given under subsection (1)(d) above shall be – (1) if the terms of the tenancy provide, in relation to such notice, for a period of more than six months, that period; (ii) in any other case, six months”. The Tribunal is satisfied that the tenancy has reached its finish and, as the Applicants have served a valid Notice to Quit, that tacit relocation is not operating. A valid notice in terms of section 33(d) has also been served on the Respondent, giving at least six months’ notice that the Applicant requires possession of the property.
17. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession, in terms of Section 33(e) of the 1988 Act. As the Respondent did not participate in the CMD, or send written representations, the information available to the Tribunal about her circumstances was limited. The Applicant’s representative was able to confirm that the Respondent has three dependant children at the property, one of whom is a baby, and is in receipt of Universal Credit. Although rental payments have sometimes been erratic, the Respondent did not incur substantial arrears until relatively recently, but now owes £3500. This sum is likely to increase as direct universal credit payments do not cover the full rent charge. No information is available as to the cause of the arrears, and it is not known whether the Respondent or her family suffer from any health problems. However, the Tribunal notes that the Respondent has also failed to provide access to the property for inspection and repair, and is keeping several dogs, in breach of her tenancy agreement.
18. The Tribunal notes that the Applicants purchased the property as an investment and decided to sell it when their mortgage term came to an end. Selling the property has become a priority following financial problems connected to the pandemic and the lost rental revenue from the property, due to Respondent’s failure to pay rent. The Tribunal also notes that the Respondent was notified that the Applicants required possession of the property at the end of January 2021 and has had time to seek alternative accommodation. Furthermore, she has not opposed the application.
19. As the Respondent has not opposed the application or provided any information about her circumstances, and as the Tribunal has been advised that the

Applicants require to sell the property due to financial difficulties, that the Respondent has incurred substantial rent arrears and has breached the tenancy agreement, the Tribunal is satisfied that it would be reasonable to grant the order for possession.

20. The Tribunal determines that the Applicants have complied with the requirements of the 1988 Act and that it is reasonable to grant an order for possession of the property.

Decision

21. The Tribunal determines that an order for possession of the property should be granted against the Respondent.

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.



Josephine Bonnar, Legal Member

26 October 2021