



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/22/1093

Re: Property at 20 Langdykes Crescent, Cove Bay, Aberdeen, AB12 3HF (“the Property”)

Parties:

Mr David Barr, Ardmyle, Tough, Alford, Aberdeenshire, AB33 8DN (“the Applicant”)

Miss Sylvia Williamson, 20 Langdykes Crescent, Cove Bay, Aberdeen, AB12 3HF (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988.

- Background
 1. An application was submitted to the Tribunal under Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a repossession order against the Respondent upon termination of a short assured tenancy agreement.
- The Case Management Discussion
 2. A Case Management Discussion (“CMD”) took place on 8 July 2022 by tele-conference. The Applicant was represented by Ms Donnelly of TC Young. There was no appearance by or on behalf of the Respondent. The application had been intimated on the Respondent by Sheriff Officer on 25 May 2022. The Tribunal was accordingly satisfied that the Respondent had been duly notified

of the date and time of the CMD and that the CMD could proceed in the Respondent's absence.

3. A separate application by the Applicant seeking a payment order against the Respondent under Rule 70 of the Rules in respect of rent arrears and under case reference FTS/HPC/CV/22/1094 was heard at the same time.
4. The Applicant's representative moved for the order for repossession to be granted as sought. The parties had entered into a Short Assured Tenancy Agreement. The Applicant had served a Notice to Quit and Notice in terms of section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") on the Respondent. The Respondent had failed to remove from the Property and continued to reside therein. The Applicant required repossession of the Property.
5. The Applicant's representative submitted that it would be reasonable to grant the order in the circumstances. The Respondent was aged in her mid-40s and had a 12-year-old disabled son. She was unemployed. The Applicant had offered assistance to the Respondent on a number of occasions, providing a number of letters to the Housing Benefit department to assist her with claims. She had been in receipt of Housing Benefit since July 2018 but these payments did not meet the monthly rent of £750 and no efforts had been made to address the monthly shortfall. This had resulted in rent arrears of £7,284.80 as at the date of the CMD. The Applicant had met with family members of the Respondent to try and address the rent arrears, and it was believed at one point that the Respondent's parents had been making payments on her behalf but this had stopped when they retired. It was submitted that the Respondent had accepted the level of arrears in text message sent to the Applicant and that in September 2021 she had indicated that she intends to apply for further benefits to increase her income, but no further information has been forthcoming. In December 2021 she advised the Applicant that she had been looking for alternative accommodation and had been advised to remain in the Property until an eviction order had been granted.
6. It was further submitted that the Applicant's own circumstances also should be considered when considering the reasonableness of granting the order. The Applicant's daughter has been diagnosed with stage four cancer and his wife has left her job as a vet to help care for her and their young grandchild. This has resulted in a drop in income and the rental income is required to assist with their financial circumstances.

- Findings in Fact

7. The Tribunal made the following findings in fact:

- (i) The parties entered into a Short Assured Tenancy Agreement ("the Agreement") which commenced 3 July 2016 and with an end date of 2 July 2017. Thereafter, if the Agreement is not brought to an end by either party it will run on a two-monthly basis until ended by either party;

- (ii) A Notice to Quit and notice under section 33 of the 1988 Act were served on the Respondent on 1 July 2021;
- (iii) The Notice to Quit and notice under section 33 of the 1988 Act required the Respondent to remove from the Property by 2 January 2022;
- (iv) The Respondent had failed to remove from the Property and continues to reside therein.

- Reasons for Decision

8. The Tribunal was satisfied that the terms of section 33 of the 1988 Act had been met: namely that the tenancy had reached its end; tacit relocation was not operating; a notice had been served in terms of that section giving at least 6 months' notice; and no further contractual tenancy was in existence. The Tribunal was also satisfied that it was reasonable to grant the Order taking into account the level of rent arrears and the length of time that the rent has been in arrears. The Tribunal considered both parties' difficult circumstances, but notes that the Respondent has been taking advice regarding her housing position and that it is hoped that she and her son will be re-housed upon the granting of an eviction order. In the absence of any written or verbal submissions by the Respondent, based on the submissions of the Applicant the Tribunal was satisfied that it was reasonable to grant the order.

- Decision

9. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988.

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.

F Watson

Legal Member/Chair

Date: 8 July 2022