



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/21/1579

Re: Property at Flat 2/2 68 Sandaig Road, Glasgow, G33 4SY (“the Property”)

Parties:

Mr Adrian Muir, Flat 2/3 2 Kildale Way, Rutherglen, G73 1JJ (“the Applicant”)

Ms Helen O'Brien, Flat 2/2 68 Sandaig Road, Glasgow, G33 4SY (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member) and Tony Cain (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery of possession be granted.

A Background:

[1] The application for an order for Possession on Termination of a Short Assured Tenancy in terms of S 33 of The Housing (Scotland) Act 1988 was made on 1 July 2021. A Case Management Discussion (CMD) took place on 1 September 2021. The CMD note of said date is referred to for its terms. A first direction was issued to the parties and a hearing fixed for 4 November 2021. On 3 November 2021 the Tribunal granted a postponement of the hearing on unopposed motion of the Respondent. A further direction dated 8 November 2021 was issued to the parties and a further hearing date set for 12 January 2022. On 10 January 2022 the legal representatives of both parties wrote to the Tribunal advising of a joint position and asking for the Tribunal to deal with the case without a hearing.

[2] The following documents were lodged by the Applicant :

1. Copy tenancy agreement dated 23 April 2017
2. Copy AT5

3. Copy Notice to Quit dated 27 November 2020 to 23 April 2021 and execution of service on 1 December 2020
4. Copy S 33 Notice dated 27 November 2020 to 2 June 2021 and execution of service on 1 December 2020
5. S 11 Notice Homelessness etc (Scotland) Act 2003
6. Copy email sending same dated 1 July 2021.
7. Copy rent arrears statements up to 1 December 2021
8. Insurance, mortgage and factor statements for the property to 29 November 2021
9. Letter to Respondent dated 10 and 18 April 2019 including correspondence from Glasgow City Council regarding the end of Housing Benefit payments dated 25 March 2019 and 10 April 2019 respectively
10. Telephone log entries from Hunter and Donaldson to the Respondent
11. Extract Confirmation of the Estate of the late Roderick Muir dated 3 October 2018 from Glasgow Sheriff Court
12. Response to Direction document 30 September 2021

[3] The Applicant's solicitor lodged written submissions on 20 December 2021.

The documents are referred to for their terms and held to be incorporated herein.

B The Case Management Discussion:

[4] With the consent of both parties the hearing on 12 January 2022 at 10 am was converted on the day to a further CMD.

Ms Donnelly attended on behalf of the Applicant. Mr McPhee attended on behalf of the Respondent.

The legal member explained that a motion for a decision of consent as usual in the Sheriff Court and an administrative process on that basis was not envisaged in the Housing and Property Chamber's Rules of Procedure. If the material facts can be agreed by the parties then Rule 18, however, allows a decision without a hearing.

Both parties agreed that this process should be adopted. The representatives of both parties stated their positions.

[5] On behalf of the Applicant Ms Donnelly stated that it is accepted that the Respondent has various health issues and occupies the property with her two sons. The current rent arrears are £19,489.28. The arrears statement up to and including 1 December 2021 had been intimated to the Respondent and a further rental charge of £550 had fallen due since then. There had been no payment of rent to date since the start of the proceedings. However, DWP had been in contact with the Applicant to indicate that payments for current rental would be made in due course. The owner of the property had died some 4 years previously and the estate requires to be wound up. The Applicant considers that in light of the ongoing non payment of rent for a period since April 2019 the Tribunal should find it reasonable to grant the eviction order. The Applicant would not be opposed to a sist of the execution for 10 weeks, Given that thereafter a charge would have to be served on the Respondent with 2

week period, this would bring the time any eviction could be carried out to 6 April 2022, which was the date agreed in the joint position intimated previously to the Tribunal.

[6] Mr McPhee for the Respondent confirmed that the rent arrears position was agreed and that the Respondent agreed that it would be reasonable in all the circumstances for an eviction order to be granted. The joint position had been that the Respondent would consent to an eviction order on the understanding that the Applicant would not enforce that for 12 weeks and that she would commence payment of rent meantime.

C Findings in Fact:

[7] Based on the written submissions and the statements made by both parties at the two CMDs the Tribunal makes the following findings in fact:

- a) the tenancy is a Short Assured Tenancy and form AT5 had been duly provided to the Respondent at the start of the tenancy. The tenancy commenced on 23 April 2017 with an initial ish date of 23 October 2017 and continued by tacit relocation 6 monthly in terms of clause 18 of the lease.
- b) the contractual tenancy was correctly terminated by the Notice to Quit issued to the ish date of the tenancy on 23 April 2021 by Notice to Quit dated 27 November 2020. The S 33 Notice dated 27 November 2020 for a removal date of 2 June 2021 together with the Notice to Quit were both served on the Respondent by Sheriff Officers on 1 December 2020
- c) tacit relocation is not operating
- d) no further contractual tenancy is in place
- e) the required notice under S 33 of the 1988 Act had been served with the required 6 months notice period, which expired on 2 June 2021
- f) rental payments are due at £550 per month and the Respondent has accrued £19,489.28 in rent arrears in the period from 1 March 2018 to 12 January 2022.
- g) the arrears commenced well before the start of the Covid pandemic in 2020.
- h) the Respondent resides at the property with her two sons (15 and 16 years of age respectively), who are in full time education.
- i) the Respondent suffered a stroke in 2021 and contracted sepsis, which impacted on her mobility. She has unspecified mental health problems.
- j) The Applicant's agents informed the Respondent in April 2019 that they had received intimation from Glasgow City Council that the Housing Benefit payments for the Respondent were to be suspended.
- k) on 10 and 18 April 2019 the Applicant's agents forwarded the correspondence received regarding Housing Benefit to the Respondent asking her to address the situation
- l) no further Housing Benefit payments were received by the Applicant after 10 May 2019.
- m) the Applicant is the Executor of his late brother's estate, which includes the property.
- n) the estate has ongoing outgoings with regard to the property as set out in the insurance, mortgage and factor statements submitted.
- o) Confirmation for the estate was granted on 3 October 2018.

- p) The Executor is under a legal obligation to wind up the estate and to distribute the estate components to several beneficiaries. This cannot be finalised without the property being dealt with.
- q) Until the proceedings commenced the Respondent has not addressed the issue of the increasing arrears. She has now, with the help of her son and her legal representatives, applied for Universal Credit payments for rent to be recommenced .
- r) no payments have yet been received by the Applicant.
- s)The Respondent is seeking to be re-housed with the assistance of the Local Authority.

D Reasons for the Decision:

[8] The Tribunal considered that the material facts of the case were not disputed.

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;*
- (b) by videoconference; or*
- (c) by conference call.*

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;*
- (b) identifying what facts are agreed between the parties;*
- (c) raising with parties any issues it requires to be addressed;*
- (d) discussing what witnesses, documents and other evidence will be required;*
- (e) discussing whether or not a hearing is required; and*
- (f) discussing an application to recall a decision.*

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—
(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

- (i) correcting; or*
- (ii) reviewing on a point of law,*
a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The Tribunal concluded it was not necessary to hold an evidential as the material facts of the case are agreed and the Respondent does not oppose the order being granted.

The documents lodged evidenced sufficiently the matters required to determine whether the legal tests for an order in terms of S 33 of the Housing (Scotland) Act 1988 are met. The Tribunal makes the decision on the basis of the documents lodged by the parties and the information given at the CMDs.

[9] The legal test for an eviction order is set out in S 33 of the Housing (Scotland) Act 1988 as amended by the Coronavirus (Scotland) Act 2020. The Coronavirus (Scotland) Act 2020 applies to this case as the Notices were served after 7 April 2020 when the Act came into force.

S 33 states:

33 Recovery of possession on termination of a short assured tenancy.

(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; and

(c) that no further contractual tenancy (whether a short assured tenancy or not) 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.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) 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.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.

In short, in terms of S 33 (1) of the Housing (Scotland) Act 1988 an order for possession of the house under a Short Assured Tenancy shall be made if the Tribunal is satisfied that:

1. The short assured tenancy has reached its ish
2. That tacit relocation is not operating
3. That there is no further contractual tenancy in existence
4. That the landlord has given to the tenant notice that he requires possession of the house.
5. That it is reasonable in all the circumstances to grant the order.

[10] With regard to the issue of reasonableness, the Tribunal had considered in detail the submissions by the Respondent's representative of 20 December 2021. Whilst this confirms that the Respondent has physical and mental health issues and resides in the property with two teenage sons, who are in full time education, the Respondent had entered into a Short Assured Tenancy on the private housing market and was aware that in order to stay in the property rent had to be paid.

[11] She was made aware of the issues with Housing Benefit by the Applicant's agents in April 2019 and did not take appropriate steps to have rental payments reinstated at the time. No rent was received for a period of 31 months resulting in rent arrears of £19,489.28. She did not seek appropriate assistance if she felt that she was unable to deal with the matter herself. Ultimately it was the Applicant's agents who made contact with the benefits agency and provided information in the time prior to the action being raised.

[12] This has to be seen in the context of the ongoing outgoings to be paid by the estate of the late owner and the duty of the Executor to wind up the estate after a period of over 3 years since Confirmation was granted.

[13] The Respondent herself does not dispute that in the circumstances it is reasonable for an eviction order to be granted and indeed this was the agreed position between the parties at the CMD on 12 January 2022. The concerns regarding finding appropriate alternative accommodation had been addressed in the representations of the Respondent's legal representative of 20 December 2021 with a suggestion of a delay of execution of the any order under Rule 16A of the Rules of Procedure of 12 weeks. In the joint position intimated to the Tribunal by the legal representatives of both parties the suggestion was to reflect the situation by granting an eviction order and an undertaking of the Applicant not to enforce this until 6 April 2022 on the understanding that rental payments would be made meantime. The Tribunal considered that a clear and unambiguous outcome was required to ensure that the Respondent was in a position to know exactly when the order can be enforced.

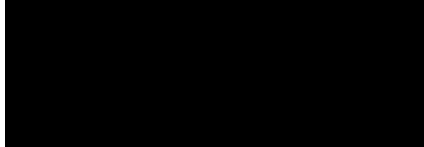
[14] Having taken into account all the above factors the Tribunal considers that in particular in light of the significant period of non payment of rent, the amount of rent arrears and the legal obligations of the Applicant it was reasonable in all the circumstances to grant an eviction order and to sist the execution of the order for 10 weeks. Together with the 14 day period of any charge to be served, this corresponds with the 12 week period to 6 April 2022 envisaged by both parties and reflects the potential difficulties of finding alternative accommodation for the Respondent. The decision was unanimous.

E Decision

The Tribunal makes an order for recovery of possession in terms of S 33 of the Housing (Scotland) Act 1988 but in terms of S 20 (2) (a) of the Housing (Scotland) Act 1988 and Rule 16A of the Rules of Procedure orders a delay in execution of this order for 10 weeks to 23 March 2022.

F 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/Chair

12 January 2022

Date