



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 (“the Act”)

Chamber Ref: FTS/HPC/EV/22/2098

Re: Property at 5 Flat 0/1 Walker Street, Paisley, PA1 2EN (“the Property”)

Parties:

Mr Kevin Lewis, 119 Bangor Road, Newtownards, Co Down, BT20 3PP (“the Applicant”)

Mr Scott Bevan, 5 Flat 0/1 Walker Street, Paisley, PA1 2EN (“the Respondent”)

Tribunal Members:

Jim Bauld (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. By application dated 29 June 2022, the applicant sought an order under section 33 of the Housing (Scotland) Act 1988 (“the Act”) and in terms of rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

2. On 21 October 2022 the application was accepted by the tribunal and referred for determination by the tribunal.
3. A Case Management Discussion was set to take place on 18 January 2023 and appropriate intimation of that hearing was given to both the landlord and the tenant

The Case Management Discussion

4. The Case Management Discussion (CMD) took place on 18 January 2023. The applicant was not personally present but was represented by staff from his letting agency, namely Jacqueline McLellan, Manager and Daryl Harper, Assistant Manager of Castle Residential, Paisley. The Respondent did not attend.
5. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters

Discussions at CMD

6. The tribunal asked various questions of the landlord's representatives with regard to the application
7. The tribunal noted that the respondent is still residing in the property. His age was estimated by the applicant's representatives as being in his early 30s. While he had expressed a desire to return to live in Greenock to be closer to his child's school, he had not yet done so. It was believed that his child stayed overnight with him on certain days during the week but the representatives had been given no specific details of the arrangement
8. The rent for the property has remained £350 since the creation of the tenancy and there were no arrears.

9. It was noted that the landlord wished to recover possession of the property in order to sell it. The property has significantly declined in value over the years and the income from the property was no longer sufficient to cover the relevant outgoings on the property.
10. The representatives indicated that they had attempted to negotiate a sale of the property to another landlord investor (thus retaining the tenant) but had been unable to agree a price which was satisfactory to the applicant.
11. It was also noted that the property had been subject to a fire which took place in September 2022, which had been caused by the negligence of the respondent. He had fallen asleep while intoxicated and had left something cooking in the kitchen which caught fire. Significant smoke and fire damage has been caused to the property, especially the kitchen. . Attempts to organise repairs to the interior of the property had been prevented by the tenant who had not allowed access to a number of contractors.
12. At the most recent inspection in November 2022, the applicant's representatives noted that there were a number of other repairs outstanding but attempts to have these repairs effected had been again prevented by the tenant refusing access to contractors.
13. The letting agents have made numerous attempts to contact the tenant over the last few months by telephone, by visiting, and by writing to him. He is refusing to communicate with them and refusing to cooperate with them in any manner at all relating to the tenancy
14. It was their position that it was reasonable for the eviction order to be granted

Findings in Fact

15. The Applicant and the respondent as respectively the landlord and the tenant entered into a tenancy of the property by an agreement dated 16 February 2017.

16. The tenancy was a short assured tenancy in terms of the Act
17. The rent payable was £350 per month.
18. On 8 November 2021 the applicant served upon the tenant a notice to quit and a notice in terms of section 33 (1) (d) of the Act. These notices were served on the respondent by recorded delivery post. Said notices became effective on 17 May 2022
19. The notices informed the tenant that the landlord wished to seek recovery of possession using the provisions of section 33 of the Act.
20. The notices were correctly drafted and gave appropriate periods of notice as required by law.
21. The basis for the order for possession was accordingly established

Decision and reasons

22. When the 1988 Act was originally passed, the eviction process under section 33 was mandatory. The tribunal was required by law to grant the eviction order if satisfied that the required notices in terms of that section had been served upon the tenant.
23. Since 7 April 2020, in terms of changes initially made by the Coronavirus (Scotland) Act 2020 and then by the Coronavirus (Recovery and Reform) (Scotland) Act 2022, an eviction order on this basis can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order
24. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties

25. The Tribunal has a duty, in such cases, to consider the whole of the circumstances in which the application is made. It follows that anything that might dispose the tribunal to grant the order or decline to grant the order will be relevant. This is confirmed by one of the leading English cases, **Cumming v Danson**, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in an oft-quoted passage:

“[I]n considering reasonableness ... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad commonsense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account”.

26. In this case the tribunal finds that it is reasonable to grant the order.

27. The landlord has indicated a desire to sell the property which he is entitled to do.

28. The tenant had previously indicated in September 2021 that he would be leaving the property in October 2021. He then changed his mind. When the notice to quit was served upon him, he indicated that he would remove from the property by the end of July 2022 as he intended to move to Greenock to be closer to his child who was starting school there. The landlord was entitled to rely upon this information from the tenant that the property would be vacated. The tenant has provided no information to the tribunal, indicating why he wishes to continue to reside in Paisley given his previously expressed wish to move to Greenock.

29. The tribunal has noted that the tenant has refused to cooperate with the landlord in any matter relating to the tenancy and that he has through his negligence caused significant damage to the property.

30. The balance of reasonableness in this case is weighted towards the landlord in this application

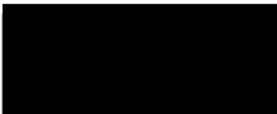
31. The tribunal also exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD

Decision

The order for recovery of possession is 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.



Jim Bauld
Legal Member/Chair

18 January 2023
Date