



**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/23/4102

Re: Property at 93 Greenock Road, Flat 2-2, Paisley, PA3 2LF (“the Property”)

Parties:

William Megginson, 10 Pentland Road, Chryston, Glasgow, G69 9LS (“the Applicant”)

Helen Andrews, 93 Greenock Road, Flat 2-2, Paisley, PA3 2LF (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. This is an application by the Applicant for an order for possession on termination of a short assured tenancy in terms of rule 66 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The tenancy in question was said to be a Short Assured Tenancy of the Property by the Applicant to the Respondent commencing on 1 March 2016.
2. The application was dated 17 November 2023 and lodged with the Tribunal on that date. This would make the application subject to the *Cost of Living (Tenant Protection) (Scotland) Act 2022*, but given the date of consideration of the application and the impending expiry of that Act, there is no effect on the remedy sought nor the disposals open to us.

3. The application relied upon a Notice to Quit and notice in terms of section 33 of the Housing (Scotland) Act 1988, both dated 3 August 2023, providing the Respondent with notice (respectively) that the Applicant sought to terminate the Short Assured Tenancy and have the Respondent vacate, each by 2 November 2023. Evidence of postage of the said notices by recorded delivery on 3 August 2023, and delivery of the notices on 4 August 2023, was included with the application.
4. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Renfrewshire Council on 17 November 2023 was provided with the application.

The Hearing

5. The application called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting remotely by telephone conference call, on 15 March 2024 at 10:00. We were addressed by the Applicant’s agent, Ann McMaster, letting manager, Ross & Liddell, and by the Respondent herself.
6. We confirmed the following issues were agreed between the parties:
 - a. That there was a Short Assured Tenancy.
 - b. That the Notice to Quit and Section 33 Notice were prepared in appropriate terms, and served upon the Respondent on appropriate notice.

This left us to consider only the issue of reasonableness, on which the Respondent first indicated that she sought to oppose eviction, but by the end of the CMD withdrew such opposition. We required, nonetheless, to consider the issue of reasonableness in full which we did by seeking submissions from both parties.
7. The Applicant’s agent explained that eviction was sought due to financial issues. The Applicant had found that his mortgage had doubled and it was no longer economic to rent out the Property. (No documentation was provided for this but the current restrictions on rent increases, and the increase in mortgage rates in recent years, was known to us and the Respondent did not dispute the Applicant’s financial issues.) The Applicant’s agent confirmed that the Respondent was a good tenant and that there were no rent arrears.
8. The Respondent explained the following:
 - a. The Property was a two-bedroom flat in which she resided with her three daughters.
 - b. The daughters were 13, 16 and 18, all in full-time education at nearby places of education, and all intending to remain at home with her for the time-being.
 - c. The daughters currently shared a large room at the flat.
 - d. When she received the notices, the Respondent was very anxious about eviction but contacted the local authority. She was informed by them of there being a Tribunal process before she could be evicted.

- e. Since that time she has sought to be placed on the list for rehousing both contacting the council and various housing associations. She had not yet been rehoused, however, as she has been told that there is low housing stock and she would require to be provided with a four-bed property given the age of her children.
- f. She has told the authorities that she would be willing to be rehoused in a smaller property, and has widened the areas that she wishes to be considered for on two occasions (so as to increase the chances of being rehoused).
- g. She has been told that she is on the housing list but her current priority is considered on the basis that she is housed at present.
- h. She had investigated the private rental market but nothing was both suitable and affordable.
- i. She works as a care assistant in a local hospital and is further in receipt of Universal Credit, Working Tax Credit and Child Tax Credit.

The Respondent was at times fatalistic about the application, and expressed a view that she appreciated that she needed to move out but that she had nowhere to go and did not wish to be homeless. We pressed her on whether she opposed eviction on the grounds of reasonableness. We further raised whether, if we were to grant eviction, whether she sought any suspension of the eviction order. The Respondent made comments supporting such a suspension, but did not specify any specific date to which she sought suspension.

- 9. The Applicant's agent confirmed that there was no challenge to any of the Respondent's submissions and that the Applicant was very sympathetic to the Respondent but the Applicant's financial issues remained. We pressed her on the same question of a grant of the order, but with a suspension. The Applicant's agent lacked instructions as to whether the Applicant could sustain the financial pressures of a suspension.
- 10. We adjourned briefly for both parties to consider their position on the application, and any position on a suspension should we be willing to grant the order at the CMD without further procedure. The Applicant's agent was, in particular, to attempt to seek instructions from the Applicant during the adjournment. On recommencing, the Applicant's agent confirmed that she had not managed to obtain instructions and her only position was therefore that eviction was sought with no suspension. The Respondent appeared no longer to oppose eviction but to seek a suspension of as long as we would grant (still without any submissions on what she saw as a suitable date for which the order should be suspended to).
- 11. Neither party sought a continuation of the CMD for further submissions or evidence, and we were satisfied that full submissions had been received from both on their respective positions, and that there were no disputed matters on which evidence was required.
- 12. No order for expenses was sought.

Findings in Fact

13. On 1 March 2016, the Applicant let the Property to the Respondent by lease with a start date of 1 March 2016 until 2 September 2016 to “continue thereafter on a monthly basis until terminated” (“the Tenancy”).
14. The Tenancy was a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988 further to the Applicant issuing the Respondent with a notice under section 32 of the 1988 Act (an “AT5”) on 1 March 2016, prior to commencement of the Tenancy.
15. On 3 August 2023, the Applicant’s agent drafted a Notice to Quit in correct form addressed to the Respondent, giving the Respondent notice that the Applicant wished her to quit the Property by 2 November 2023.
16. On 3 August 2023, the Applicant’s letting agent drafted a Section 33 Notice under the 1988 Act addressed to the Respondent, giving the Respondent notice that the Applicant required possession of the Property by 2 November 2023.
17. 2 November 2023 is an ish date of the Tenancy.
18. On 3 August 2023, the Applicant’s agent competently served each of the notices upon the Respondent by recorded delivery post. The Respondent was thus provided with sufficient notice of the Applicant’s intention that the Tenancy was to terminate on 2 November 2023.
19. On 17 November 2023, the notice period under the notices having expired, the Applicant raised proceedings for an order for possession with the Tribunal, under Rule 66, the grounds of which being that the Tenancy had reached its ish; that tacit relocation was not operating; that no further contractual tenancy was in existence; that notice had been provided that the Applicant required possession of the Property all in terms of section 33 of the 1988 Act; and that it was reasonable to make the order.
20. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Renfrewshire Council on or around 17 November 2023 on the Applicant’s behalf.
21. On 26 January 2024, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondent.
22. The Applicant’s mortgage payment having increased significantly against the passing rent, the Applicant seeks to sell the Property to reduce his financial outgoings and raise funds.
23. The Respondent lives at the Property with her three teenage children.

24. The Respondent's children are in full time education and attend places of education near to the Property.
25. The Property is a two bedroom flat.
26. The Respondent's three children share a room at the Property.
27. The Respondent is in employment as a care assistant in a hospital. She is in receipt of Universal Credit as well as tax credits.
28. The Respondent has sought to be rehoused from Renfrewshire Council and various housing associations but has not yet received an offer of rehousing.
29. The Respondent has considered local private sector housing but has been unable to identify any property both suitable and affordable to her.

Reasons for Decision

30. The application was in terms of rule 66, being an order for possession upon termination of a short-assured tenancy. We were satisfied on the basis of the application and supporting papers that the Tenancy was a Short Assured Tenancy and that the necessary notices had been served with sufficient notice.
31. We thus require, in terms of the 1988 Act as amended, to consider "that it is reasonable to make an order for possession". On this, we found the arguments finely balanced. We were satisfied to accept that the Applicant was suffering financially but the magnitude of the financial issues, and the urgency for resolving them, was not explained to us. The Respondent's position was however self-evident: this was a family home and the order both threatened homelessness as well as significant disruption to education. Nonetheless, there was no strong argument for a refusal of the order, as the Respondent was seeking rehousing and appreciated the Applicant's desire to recover the Property.
32. Though we could not be certain, it further seemed likely that the grant of an order for eviction would hasten the Respondent's rehousing, as it would prioritise the Respondent's application for rehousing. Finally, we did consider it relevant that the Property was positively unsuitable for the Respondent's family in that it was only a two bedroom flat.
33. In the circumstances before us, we were satisfied that it was reasonable to grant the application but subject to suspension of the order. In considering such a suspension, we were hampered by the lack of submissions on both sides, but it was a matter of judicial knowledge that the school and college term, and any examination schedule, would be concluded by the end of June. If there was to be a disruption caused by eviction, a suspension to 1 July 2024 would mitigate against this. It would also afford an extended period for suitable housing stock to (hopefully) become available and offered to the Respondent. We thought that

a grant of eviction with such a suspension was a reasonable balance struck between the parties' respective strong reasonableness arguments.

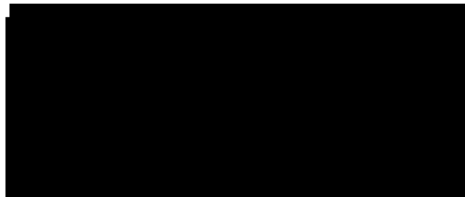
34. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. We were thus satisfied to grant an order for possession subject to suspension.

Decision

35. In all the circumstances, we make the decision to grant an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988 suspended to no earlier than 12:00 on 1 July 2024.

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.



15 March 2024

Legal Member/Chair

Date