



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 1988 Act”)

Chamber Ref: FTS/HPC/EV/22/3185

Re: Property at 3F1 52 Ashley Terrace, Edinburgh, EH11 1RX (“the Property”)

Parties:

Ms Laura Fyfe, 7/7 Myreside View, Edinburgh, EH14 1AG (“the Applicant”)

Ms Karen Macdonald, 3F1 52 Ashley Terrace, Edinburgh, EH11 1RX (“the Respondent”)

D J Alexander, 1 Wemyss Place, Edinburgh, EH3 6JN

Tribunal Members:

Martin McAllister (Legal Member) and Gerard Darroch (Ordinary Member) (“the tribunal”)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) determined that an order for possession of the Property be made.

Background

- 1. This was a case management discussion held by teleconferencing on 7th December 2022 to consider the application made by the Applicant dated 2nd September 2022 for an order of possession of the Property in terms of Rule 66 of the Tribunal Rules.**
- 2. The application had been accepted for determination on 30th September 2022.**

Case management discussion

- 3. The Applicant was present and was represented by Mr Raphael Barr of the Applicant’s Representative. The Respondent was not present.**
- 4. The legal member explained the purpose of a case management**

discussion.

Preliminary Matters

5. It was noted that the arrangements for the case management discussion had been intimated to the Respondent by Sheriff Officer on 3rd November 2022. On 28th November 2022, the Respondent advised the Tribunal that she would not be attending the case management discussion. It was noted that the Respondent had submitted a statement and various copy emails and text messages.
6. It was noted that the Applicant's Representative had served a Notice to Quit and notice required under section 33 of the 1988 ("Section 33 Notice") on the Respondent served on 24th February 2022 and that these demonstrated that the Applicants had required the Respondent to remove herself by 1st September 2022.
7. Mr Barr said that the application had been necessary because the Respondent had not removed herself from the Property by 1st September 2022 and was still residing in it.
8. Mr Barr submitted that the tribunal had sufficient information to determine the application and that a Hearing would not be necessary.

Findings in Fact

1. The Applicant and the Respondent are parties to a short assured tenancy agreement in respect of the Property dated 2nd October 2012.
2. The term of the tenancy was 2nd October 2012 to 1st October 2013 (both dates inclusive).
3. The tenancy agreement provided for the tenancy to continue on a month to month basis if it was not brought to an end on 1st October 2013.
4. The Applicant served a Section 33 Notice on the Respondent on 24th February 2022 requiring vacation of the Property by 1st September 2022.
5. The Respondent remains in occupation of the Property.
6. The required notice in terms of the Homelessness etc. (Scotland) Act 2003 has been given to the local authority.

Findings in Fact and Law

1. The tenancy continued by tacit relocation from 1st October 2013 until it was brought to an end by service of the Notice to Quit on 24th February 2022.
2. The tenancy ended on 1st September 2022.
3. The Applicant is entitled to recover the Property because the tenancy has been brought to an end.
4. It is reasonable for the order of eviction to be granted.

Documents

9. The Tribunal considered the documents which had been lodged with the application:

(a) Copy of the short assured tenancy agreement dated 1st October 2012.

(b) AT6 Form relating to the short assured tenancy.

(c) Notice to Quit served on 24th February 2022 requiring the Respondent to leave the Property by 8th August 2022.

(d) Section 33 Notice served on 24th August 2022.

(e) Sheriff Officer's certificate of citation in respect of service of the Notice to Quit and Section 33 Notice.

(f) Copy of Notice to local authority under Section 11 of the Homelessness etc (Scotland) Act 2003.

(g) Statements by the Applicant and Respondent.

(h) Various copy emails, letters and text messages.

10. The Law

Section 33 of the Housing (Scotland) Act 1988 as amended by The Coronavirus (Scotland) Act 2020

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)

(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.

Evidence

- 11. The Applicant's position was set out in her statement and she also gave oral evidence.**
- 12. The Applicant stated that, prior to entering into the short assured tenancy, the Property had been her home. She had left it to move into a bigger rented Property with her then partner.**
- 13. The Applicant stated that she had subsequently married her partner and that they had decided to purchase a property to live in but could not do so without using the sale proceeds of the Property as a deposit.**
- 14. The Applicant said that the Respondent had been a good tenant who paid rent on time and looked after the Property. She said that she was sorry that she had to recover possession of the Property particularly since the Respondent had stated in her written submissions that she has a disability.**
- 15. The Applicant said that she had been anticipating that she would have the Property returned to her on 1st September 2022 and had put in train arrangements to put the house on the market and had instructed a solicitor and a selling agent. The tribunal was referred to the letter from her solicitors dated 21st February 2022 which confirmed that they had been instructed. She said that she had arranged for the selling agent to visit the Property on 5th September 2022 for the purpose of carrying out a**

valuation and that this had to be cancelled because she could not sell the Property with a tenant in it.

16. The Applicant said that her letting agents told her that the Respondent was not intending to move out at or prior to 1st September 2022 and that this had come as a great shock especially since she had been told by the agents that no previous notice of this had been given to them. She said that the Respondent had not contacted the letting agents having received the Notice to Quit and she had been told that this was quite unusual. She said that it would have been helpful to her and less stressful if the Respondent had engaged with the letting agents during the period of notice.
17. The Applicant said that she understood the difficulties facing the Respondent in getting a rented property in the Edinburgh market but that she needed to move on with her life. She said that she feared that the selling market for the Property would get worse.
18. Mr Barr said that it was only in late August 2022 that his company discovered from the Respondent that she was not intending to move out of the Property at the expiry of the notice period. He said that, in similar circumstances, he had experience of tenants engaging with his company when served with a notice that the tenancy was being terminated and that sometimes they tried to negotiate an extension of the notice period.
19. Mr Barr said that, when his company knew that the Respondent was not going to remove from the Property by 1st October 2022, it did everything possible to assist her. He referred to the Respondent being given details of a rental property on 26th August 2022 which was within her budget and near to the Property. He said that the Respondent had not engaged in relation to it. He said that he did not accept that someone from his company had telephoned the Respondent on a daily basis and that any contact which there had been was to assist her in finding another property. He said that there had been no intimidating behaviour.
20. The written submission of the Respondent stated that she understood and sympathised with the Applicant's wish to sell the Property and never wished to delay the sale.
21. The Respondent stated that she had made efforts to obtain alternative housing and submitted copy text messages to vouch that she had tried on six occasions to get another property. The Respondent stated that she does not work because of a disability and that many letting agents have advised her that she does not meet their financial criteria.
22. The Respondent stated that the Applicant's Representative had been calling her on a daily basis and that she found their approach to be intimidating.

23. The Respondent stated that she hoped to secure a property with the City of Edinburgh Council.

Discussion and Determination

24. The Tribunal considered the documents which sought to bring the tenancy to an end. It found the notice to quit and Section 33 Notice to be in order and that they had been properly served on the Respondent who had raised no issue about them.

25. The Tribunal noted that the period of notice in the notice to quit was in excess of six months which was appropriate in terms of the statutory provisions and that the application to the Tribunal had not been made prior to the expiry of the notice period.

26. The Tribunal noted that the appropriate notice had been given to the local authority in terms of the Homelessness etc. (Scotland) Act 2003.

27. The Tribunal required to consider whether or not it is reasonable to grant an order for possession of the Property. Such consideration is a matter of judicial discretion and is arrived at after weighing the evidence.

28. The evidence of Mr Barr did not, in some respects, coincide with the Respondent's position as set out in her written submission. In arriving at its determination, the tribunal did not require to come to a view on this competing evidence.

29. The Respondent has an undisclosed disability which she states means that she does not work and a consequence of this is that her financial status does not make her attractive to letting agents as a potential tenant.

30. The Applicant is living in rented accommodation. The Property is the only one which she owns and she needs to sell it to fulfil her plan to purchase a family home with her husband.

31. The tribunal did not consider that it was reasonable for the Applicant to allow the Respondent to maintain the tenancy of the Property because she is finding it difficult to get another property. It determined that, in weighing both parties' positions, it was reasonable to grant the order of eviction to allow the Applicant to recover possession of the Property so that she can sell it.

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.

Martin McAllister

**Martin J. McAllister
Legal Member
7th December 2022**