



**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/22/3262

**Re: Property at 47 Glenburn Gardens, Whitburn, West Lothian, EH47 8NL (“the
Property”)**

Parties:

**Mr Rodger Kerr, Willowbank, Stewart Grove, Harthill, Lanarkshire, ML7 5PZ (“the
Applicant”)**

**Miss Caroline Kilpatrick, 47 Glenburn Gardens, Whitburn, West Lothian, EH47
8NL (“the Respondent”)**

Tribunal Members:

Valerie Bremner (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that a possession order be made for the property in terms
of section 33 of the Housing (Scotland) Act 1988 and that it is reasonable to
grant the order. The Tribunal suspended execution of the possession order until
31st March 2023 in terms of section 20 of the Housing (Scotland) Act 1988.**

Background

1. This application for a possession order in terms of Rule 66 of the tribunal rules of procedure was first lodged with the tribunal on 6th September 2022 and accepted by the Tribunal on 5th of October 2022. A case management discussion was fixed for 21st of December 2022 at 2:00 pm.

Case Management Discussion

2.The case management discussion was attended by the Applicant Mr Rodger Kerr who represented himself and also by the Respondent Miss Caroline Kilpatrick who also represented herself.

3.The Tribunal had sight of the application, a tenancy agreement, a Form AT5, a notice in terms of section 33 of the Housing (Scotland) Act 1988, a Notice to Quit the property, an execution of service of the section 33 Notice and Notice to Quit on the Respondent by sheriff officer, a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003, together with an e-mail intimating this to West Lothian Council. The tribunal also had sight of an e-mail authorising the applicant Mr Rodger Kerr to deal with all matters in relation to the property by his co-owner and brother Mr John Kerr who is also named as a landlord on the tenancy agreement.

4.The Applicant and his brother John Kerr own the property and rented it out to the Respondent in terms of a short-assured tenancy agreement which ran from 24th August 2017 to 25th February 2018 and ran after this term on a monthly basis unless terminated by either party on two months' notice. Mr Rodger Kerr, the Applicant, deals with all matters in relation to the property.

5.The Applicant Mr Kerr advised the tribunal that he and his older brother owned a number of properties including the one which was the subject of the application. He said that he and his brother were looking at some stage to sell some of their properties depending on the market and this was the first that they were thinking of selling. The property market had not developed in the way that they had hoped over the last 15 years or so and they had taken the decision to start by selling this property and they might sell others in the future. This property needed renovated and given the turbulent state of the property market at present it may well be some time before it was sold. He indicated that he knew that the Respondent had tried to leave the property and to seek other accommodation. He said he understood that the council had not been forthcoming with assistance for her, and he was aware that she needed to be rehomed. He had used what he believed was the simplest procedure to request possession of the property under section 33 of the Housing (Scotland) Act 1988. He advised the tribunal that he and his brother felt the time was right at this stage given the state of the market, their respective ages and his brother's wife's health to start making changes.

6.The Respondent Miss Kilpatrick said that she had been in the property for 22 years and had been a sitting tenant when the Applicant and his brother bought the property and took over the tenancy. She advised that she had what she described as a great relationship with the landlord. She had lived there with her daughter who is now aged 22 and lives elsewhere in temporary accommodation. Her daughter has mental health problems and is regarded as vulnerable. Her mother lives in Bathgate and has a number of medical problems. She indicated that she did not object to the possession order. She advised that when she received the Notice to Quit she had gone to West Lothian Council for assistance. She had been phoning them twice a week since then. She had contacted the housing charity Shelter who had contacted the council and she had still received no response. She had approached the local housing partnership who had also contacted the council, and nothing had happened.

7.Miss Kilpatrick had contacted her local councillor and had obtained contact from the council as recently as the day before the case management discussion. A housing

officer had advised her that she could receive temporary accommodation in a hostel in Edinburgh. She indicated this was 25 miles from where she lived now. Her mother lives in Bathgate and her daughter is currently being temporarily homed in a one-bedroom bungalow in Livingston. She does not drive and did not feel this hostel place in Edinburgh would be suitable for her. Her ultimate goal was to obtain property close to her family in the hope that her daughter could come back to live with her. Miss Kilpatrick felt that she had made huge efforts to secure assistance in obtaining other accommodation but with no success.

8. Miss Kilpatrick explained that her MP had been able to access council customer service records, and these showed that she made over 50 phone calls to the council. She said that not one had been returned and she had only spoken to customer services staff. She said she had been very recently spoken to by a housing officer. She explained that she had to seek assistance of a solicitor in order to assist her daughter in obtaining alternative accommodation.

9. Miss Kilpatrick indicated that she had been advised there is no social housing available, and it had not been suggested to her that she could be put in touch with housing associations in order to be rehoused. She explained that she had her own difficulties which included mental health problems, but these were not matters she really spoke about, and she indicated that in terms of being rehoused she had been awarded points for her own situation. She did not feel that she could seek alternative accommodation in the private sector due to her income which was derived from employment support allowance at the rate of £200 pounds per fortnight. In addition, given what she was going through with the current process at this stage she didn't want to have this happen to her in the future in another private rented property.

10. The Applicant Mr Kerr indicated that he had had a good relationship with the Respondent. He said there were other reasons for asking for possession of the property, but he wanted to keep matters simple and simply rely on the procedure in terms of section 33 of the Housing (Scotland) Act 1988. He was asked if the plans which he and his brother had for the property would be affected if an order were granted with a short delay in execution of the order to assist the Respondent in seeking alternative accommodation. He indicated that a short delay would not have an adverse effect on the plans which he and his brother had for the property and indicated he would have no difficulty with that if this would assist the Respondent to find a suitable alternative property.

11. Miss Kilpatrick indicated that any additional time to allow her to source another property would be appreciated. She reiterated that she did not wish to stay at the property as it did not feel like home anymore. Her problem she said was in getting the council to call her back. When she accessed the online portal for her council housing application it suggested that her application is currently suspended, and she was of the view that matters might not move on until such time as a tribunal order was granted.

12. Miss Kilpatrick did not seek to suggest that it would not be reasonable to grant a possession order and said that she understood why the Applicant and his brother wished to have the property back. She did not seek to suggest that any of the paperwork served in this application was in any way deficient or that she had been given insufficient notice of the Applicant seeking a possession order for the property.

13.The tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

14.The parties entered into a short-assured tenancy at the property on 24th August 2017 until 25th February 2018. This tenancy continued on a monthly basis after this term unless brought to an end on two months' notice being given by either party.

15.Notice to Quit and a notice under Section 33 of the Housing (Scotland) Act 1988 both dated 10th June 2022 were served on the Respondent requiring her to quit the property by 25th August 2022.

16.The short-assured tenancy has reached its end.

17.The contractual tenancy came to an end on 25th August 2022.

18.Tacit relocation is not operating in relation to this tenancy.

19.The Applicant has given notice to the Respondent that the landlords require possession of the property.

20.The Applicant and his brother who both own the property and are landlords in terms of the tenancy agreement are considering selling the property after it is renovated.

21.The Respondent does not oppose a possession order or suggest it is not reasonable for the Tribunal to make an order and has made efforts to seek suitable alternative housing over an extended period since she received the Notice to Quit and notice that the landlords are seeking possession of the property.

22.It is reasonable in all of the circumstances to grant a possession order.

Reasons for Decision

23.The Tribunal was satisfied that the requirements of section 33 of the Housing (Scotland) Act 1988 had been met in terms of proper notice and that the tenancy had come to an end and that tacit relocation was not in operation. The Applicant had given proper notice to the Respondent that he and the other owner and landlord require possession of the property. The Applicants are considering selling the property depending on market conditions as they consider this is the best time to do this for a number of reasons which they gave. The Respondent does not object to an order being granted and has been trying to find suitable alternative accommodation. In all of the circumstances the Tribunal considered that it was reasonable to grant a possession order.

24.Given the Respondent's situation the Tribunal felt it was appropriate to suspend execution of the order until 31st March 2023 in terms of Section 20 of the Housing (Scotland) Act 1988 and it was noted that the Applicant did not object to a short delay of this nature.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a possession order be made for the property in terms of section 33 of the Housing (Scotland) Act 1988 and that it is reasonable to grant the order. The Tribunal suspended execution of the order until 31st March 2023 in terms of section 20 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.

Valerie Bremner

Legal Member/Chair

Date

21.12.22