



**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/22/2654

Re: Property at 83/6 Hopetoun Street, Edinburgh, EH7 4NJ (“the Property”)

Parties:

**Mr John Barnes, 6 Church Farm Close, Bramerton, Norwich, Norfolk, NR14 7FD
 (“the Applicant”)**

**Ms Aline Horlock, 83/6 Hopetoun Street, Edinburgh, EH7 4NJ (“the
 Respondent”)**

Tribunal Members:

Alastair Houston (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
 Tribunal”) determined that an order for recovery of possession be made in
 favour of the Applicant.**

1. Background

- 1.1 This is an application under rule 66 of the Chamber Rules whereby the Applicant seeks an order for recovery of possession of the property let to the Respondent on a short assured tenancy agreement.
- 1.2 The application was accompanied by copies of the written agreement, Form AT5, notice to quit, notice in terms of section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”) and notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003.
- 1.3 The Respondent had lodged written representations. An email had also been received subsequently from the Applicant however, it was unclear to the Tribunal if this had been sent in error.

2. The Case Management Discussion

- 2.1 The Case Management Discussion took place on 21 November 2022 by teleconference. The Applicant was represented by Claire Mullen, solicitor. The Respondent was neither present nor represented.
- 2.2 Ms Mullen confirmed that the application was insisted upon. She wished to proceed in the Respondent's absence. The Tribunal noted that the application and notice of the Case Management Discussion had been validly served upon the Respondent. In the circumstances, the Tribunal determined that the Case Management Discussion ought to proceed as permitted by rule 29 of the Chamber Rules.
- 2.3 Ms Mullen proceeded to address the Tribunal as to the reasonableness of granting the order sought. The Applicant required vacant possession of the property as there were significant repair works required following a leak in the kitchen. It was suspected that the whole kitchen would require to be removed due to the floor being rotten. The joists underneath the floorboards would potentially require replacement and a chemical treatment employed. The disruption caused by the works would last for several months and vacant possession was required. The Applicant's letting agent had been contacted by the Respondent in March 2022 with regards to alternative properties that may be available but there had been nothing available at the Respondent's chosen price point and location. The letting agent had attempted monthly email contact with the Respondent to enquire as to the progress of vacating the property but had had little in the way of engagement.
- 2.4 The Respondent was in employment and there were no issues with rent arrears. She was around 60 years of age and resided at the property alone.

3. Reasons For Decision

- 3.1 Section 33(1) of the 1988 Act is as follows:-

(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 term;*
- (b) that tacit relocation is not operating;*
- (c) 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*
- (d) that it is reasonable to make an order for possession.*

In the present application, the Applicant had served a valid notice to quit and notice in terms of section 33 of the 1988 Act. Accordingly, the only issue for the Tribunal to determine was that of reasonableness.

- 3.2 The legislation did not specify any particular factors to which the Tribunal was to have regard beyond the factual matters which constituted the ground for an eviction order relied upon. Accordingly, the Tribunal approached the issue of reasonableness in accordance with the case of *Barclay v Hannah* 1947 SC 245 whereby the Tribunal was under a duty to consider the whole facts and circumstances in which the application was made.
- 3.3 The Applicant had provided reasoning for taking vacant possession of the property. The Respondent's representations were limited and simply confirmed that she was seeking alternative accommodation. She was in employment and without dependent children. In the absence of any other submission on the part of the Respondent, the Tribunal determined that it was reasonable to grant the order sought.
- 3.4 Given the proximity to the festive period, the Tribunal considered it appropriate to order a delay in execution of the order in terms of rule 16A of the Chamber Rules until 9 January 2023.

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.

Alastair Houston

Legal Member/Chair

21 November 2022
Date