



**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/23/0719

Re: Property at 18 Braehead Avenue, Ayr, KA8 0JY (“the Property”)

Parties:

Ms Christine James, Walnut House, 52 Love Street, Paisley, PA3 2DY (“the Applicant”)

Ms Nicola Brackenridge, 18 Braehead Avenue, Ayr, KA8 0JY (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for possession of the property and the removal of the Respondent from the property.

Background

1. By application dated 7 March 2023 the Applicant’s representative Mr John Sparks applied to the Tribunal for an order for possession of the property and the removal of the Respondent from the property in terms of Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Applicant’s representative submitted a copy of a Short Assured tenancy agreement, a Notice to Quit and a Section 33 Notice with a Sheriff Officer’s Certificate of Service in support of the application.
2. Following further correspondence between the Tribunal administration and the Applicant’s representative the application was amended and a copy of a Section 11 Notice sent to South Lanarkshire Council was submitted.

3. By Notice of Acceptance dated 25 May 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
4. Intimation of the CMD was served on the Respondent by Sheriff Officers on 14 June 2023.
5. A CMD was held by teleconference on 20 July 2023. The Applicant was represented by Mr John Sparks. The Respondent was represented by Mr Gerard Tierney. After hearing from the parties representatives the Tribunal determined that the proceedings should be adjourned to a hearing and noted the issues as:-
 - i) Is the 2013 Short Assured Tenancy agreement valid?
 - ii) If so, has a valid Notice to Quit been served on the Respondent?
 - iii) If the 2013 Tenancy Agreement is not valid what tenancy does the Respondent have?
 - iv) Has a valid Notice to Quit been served?
 - v) If a valid Notice to quit has been served on the Respondent, is it reasonable to grant an order for possession?
6. The Applicant’s representative submitted written representations to the Tribunal by emails dated 29 August, 21 September and 16 October 2023.
7. The Respondent’s representative submitted written representations to the Tribunal dated 13 October 2023.

The Hearing

8. A hearing was held by teleconference on 19 October 2023. The Applicant did not attend but was represented by Mr John Sparks. The respondent attended and was represented by Mr Gerard Tierney. Also in attendance was the owner of the property Mr Colin McDonald.
9. At the commencement of the hearing Mr Tierney advised the Tribunal that the Respondent’s position had changed as she had made significant progress with her application for council housing and had been advised she was now fourth on the list for a house. He explained that the Respondent was prepared to consent to an order being granted as long as it was subject to the provisions of the Cost of Living (Tenant Protection) (Scotland) Act 2022 which would mean that the order would not be implemented until 1 April 2024. Mr Tierney went on to say that he had contacted Mr Sparks by phone the previous day to advise him of the change of circumstances but that Mr Sparks had said that the regulations did not apply.
10. The Tribunal asked Mr Sparks for his views on the Respondent’s change of position. After some discussion with regards to the financial issues facing the

Applicant, Mr Sparks accepted that the regulations would apply. He asked the Tribunal to determine that the Respondent was obliged to meet the increased rent applied in February this year. The Tribunal explained that it did not have jurisdiction to determine any dispute as regards rent payments as it was dealing solely with the application for eviction under Section 33 of the 1988 Act.

11. Mr Tierney confirmed that he now accepted the 2013 tenancy agreement was valid. The Tribunal in any event referred the parties to the Upper Tribunal for Scotland decision in McCallum v Wright UTS/AP/23/0016 which was entirely in point and which found that a new short assured tenancy entered into after a prior assured tenancy superseded it.

Findings in Fact

12. The Respondent has occupied the property since 4 March 2010.
13. The parties entered into a Short Assured Tenancy Agreement that commenced on 3 May 2013 and endured until 3 November 2013 and from month to month thereafter.
14. The Respondent was served with a Notice to Quit and Section 33 Notice by Sheriff Officers on 2 November 2022 requiring her to remove from the property by 3 January 2023.
15. The Respondent has failed to remove from the property.
16. The Applicant's representative intimated the proceedings to South Lanarkshire Council by way of a Section 11 Notice by email dated 27 March 2023.
17. There is a verbal agreement between the Applicant and the owner of the property, Mr Colin McDonald that the Applicant acts as landlord and rents out the property and pays the outgoings in return for retaining the income from the property.
18. The owner of the property wishes to sell the property.
19. The Respondent has been accepted as being unintentionally homeless by South Ayrshire Council and will be offered council accommodation within a reasonable period.
20. The Respondent is prepared to consent to an order for possession being granted subject to the provisions of the Cost of Living (Tenant Protection) (Scotland) Act 2022 applying.

Reasons for Decision

21. The Tribunal was satisfied from the written representations and documents together with the oral submissions that notwithstanding the existence of a previous short assured tenancy the tenancy created by the parties and

commencing on 3 May 2023 was valid. The Tribunal was also satisfied that the Respondent had been properly served with a Notice to Quit and Section 33 Notice by Sheriff Officers on 2 November 2022 and that South Lanarkshire Council had been given proper notice of the proceedings.

22. The Tribunal was therefore satisfied that an order for possession could be granted if it was in the circumstances reasonable. In reaching its decision the Tribunal took account of the Applicant's financial circumstances as disclosed to it by Mr Sparks and also took account of the position adopted by the Respondent, who, having been advised that she would be offered local authority housing was prepared to consent to an order being granted subject to it not coming into effect until 1 April 2024 as she was confident she would be offered suitable accommodation in advance of that date.

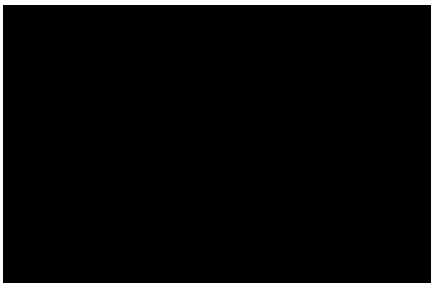
23. In light of the change in the Respondent's circumstances the Tribunal was satisfied that it was reasonable to grant the order for possession subject to the provisions of the Cost of Living (Tenant Protection) (Scotland) Act 2022.

Decision

24. The Tribunal finds the Applicant entitled to an order for possession of the property and the removal of the Respondent from the property in terms of Section 33 of the 1988 Act.

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.



Legal Member/Chair

19 October 2023
Date