



**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/23/2013**

**Re: Property at 29 Eighth Street, Newtongrange, Midlothian, EH22 4JR (“the Property”)**

**Parties:**

**Mr Stephen Renton, Apartment A, 1153 17th Street, Santa Monica, California, CA 90430, United States (“the Applicant”)**

**Dr Alison Wheelwright, 29 Eighth Street, Newtongrange, Midlothian, EH22 4JR (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member) and Gerard Darroch (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 the possession of the property and the removal of the Respondent from the property.**

**Background**

1. By application dated 20 June 2023 the Applicant’s representatives, Gilson Gray, Solicitors, Edinburgh applied to the Tribunal for an order for possession of the property in terms of Section 33 of the Housing (Scotland) Act 1988. The Applicant’s representatives submitted a copy of a tenancy agreement, notice to Quit and Section 33 Notice with proof of service, and copy of Confirmation appointing the Applicant as Executor in the estate of the late Colin Renton, the landlord.
2. Following further correspondence between the Tribunal administration and the Applicant’s representatives by Notice of Acceptance dated 19 July 2023 a legal

member of the Tribunal with delegated powers accepted the application and a Case Management Discussion ("CMD") was assigned.

3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 11 August 2023.
4. A CMD arranged for 12 September 2023 was postponed at the request of the Respondent.
5. By email dated 25 August 2023 the Respondent submitted written representations to the Tribunal.
6. By email dated 28 September 2023 the Applicant's representative submitted further written representations to the Tribunal.

### **The Case Management Discussion**

7. A CMD was held by teleconference on 21 November 2023. The Applicant did not attend but was represented by Mr David Gray of the Applicant's representatives. The Respondent did not attend but was represented by Ms Penny Radway.
8. Mr Gray explained that the Applicant was retired and currently living in Indonesia. He said it was the Applicant's intention to return to live in the property and use it as his principal home for himself and for his teenage son when with him. Mr Gray went on to say that the Applicant was currently living in rented accommodation in Indonesia. He said that the landlord Colin Renton had died in 2022 and it had been the Applicant's initial intention to sell the property but his plans had then changed as he needed to return to the UK to be closer to his son. Mr Gray explained there was however an issue with a heritable security of about £100,000 over the property and the Applicant would have to find employment in the UK in order to obtain a mortgage to clear the security. If he could not then the property would still have to be sold.
9. Mr Gray confirmed that a Notice to Quit and Section 33 Notice had been served on the Respondent by Sheriff Officers on 3 February 2023 and that a Section 11 Notice had been sent to the local authority on 20 June 2023. He confirmed that on checking through his late father's papers the Applicant had located the Form AT5 that had not been submitted to the Tribunal with the application and this had been submitted with the email of 28 September 2023.
10. The Tribunal noted that the confirmation provided with the application did not include the property and Mr Gray explained that the property had originally passed to the late Mr Renton's wife who had also died and that McDougall McQueen, Solicitors who had wound up both Mr and Mrs Renton's estates had confirmed that both executries had been completed.
11. For the Respondent Ms Radway explained that the Respondent was not contesting the application. She said that there had been an earlier Notice to

Quit that had been sent in error. She also said that although the Respondent agreed that she had signed the AT5 that had been submitted by the Applicant's representatives it had never been given to her at the commencement of the tenancy. Ms Radway went on to say that the Respondent did not consider that the property had been well maintained and it was not in a fit state and had a poor relationship with the landlord and she did not wish to remain in it however there were no other rental properties in the area at a price she could afford. Ms Radway explained that the Respondent had applied for local authority and Housing Association properties but had not received any offers. She said that the Respondent had a long history of mental health issues and had recently been diagnosed with autism. Ms Radway explained that it was likely that the Respondent would be offered temporary homeless accommodation that would not be good for her mental health. Ms Radway sought clarification as to when any order for possession would come into effect.

12. In response to a query from the Tribunal Ms Radway confirmed that she thought the Respondent had made applications to all the local housing associations as well as the local authority.

### **Findings in Fact**

13. The Respondent entered into a Short Assured Tenancy agreement that commenced on 1 June 2009 and endured for a period of six months and continued thereafter by tacit relocation for six months at a time.
14. At the commencement of the tenancy the Respondent signed a Form AT5 confirming her agreement that the tenancy was a Short Assured tenancy.
15. The Respondent's landlord Colin Renton died on 21 March 2022.
16. The Applicant is an Executor of the late Colin Renton's estate.
17. The Applicant has title and interest to make this application.
18. The Respondent was served with a Notice to Quit and Section 33 Notice by Sheriff Officers on 3 February 2023 providing that the tenancy would end on 31 May 2023.
19. The Respondent has continued in occupation of the property.
20. The Applicant has retired and wishes to return to the United Kingdom from Indonesia and use the property as his principal home and as a home for his teenage son when he visits the Applicant.
21. The Applicant will require to find employment in the UK and obtain a mortgage over the property to clear the existing heritable security or the property will require to be sold.

22. A Section 11 notice was sent by the Applicant's representatives to Midlothian Council by email on 20 June 2023.
23. The Respondent has applied for local authority and Housing association housing but received no offers.
24. The Respondent has a long history of mental health issues including depression and anxiety and has been admitted to hospital on occasions. She has also been recently diagnosed as being autistic.
25. The Respondent does not oppose the order being granted.

### **Reasons for Decision**

26. The Tribunal was satisfied from the documents submitted and the oral evidence provided that the Respondent entered into a Short Assured Tenancy with the late Colin Renton as Landlord. Although the Respondent could not recall ever receiving a copy of the Form AT5 the fact that it was agreed that she had signed the document was sufficient to satisfy the Tribunal that the document was valid.
27. The Tribunal was also satisfied that the Applicant was appointed as Executor of both his late father and late mother's estates and that he therefore had title and interest to make this application.
28. The Tribunal was satisfied from the documents produced and the oral submissions that the Notice to Quit and Section 33 Notice had been properly served on the Respondent and that appropriate Notice by way of a Section 11 Notice had been intimated to the local authority.
29. The Tribunal therefore had to be satisfied as to whether in all the circumstances it was reasonable to grant the order. In reaching its decision the Tribunal took account of the Applicant's wish to be able to provide a home in the UK for himself and for his teenage son when he visited. The Tribunal acknowledged that the Applicant had retired from his work in Indonesia and wished to return to the UK to be closer to his son. The Tribunal also acknowledged that there were potential difficulties in that there was a heritable security over the property that needed to be discharged and in order to re-mortgage the Applicant would need to find employment and obtain a mortgage in his own name. If he could not the property would need to be sold.
30. Against that it was apparent that the Respondent had significant mental health issues as well as being autistic that the Tribunal had to take into account. However the Respondent did not wish to oppose the application partly because of the condition of the property.
31. As the Cost of Living regulations will apply any order granted by the Tribunal will not come into effect until 31 March at the earliest and given the issues that the Respondent has the Tribunal would hope that the local authority would give the Respondent some priority in finding her suitable accommodation in that time

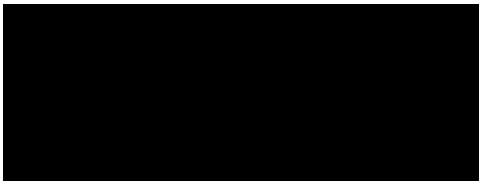
period. Having taken account of both parties circumstances the Tribunal is satisfied that it is reasonable to grant the order.

### **Decision**

32. The Tribunal having carefully considered the submissions made on behalf of both parties together with the written representations and being satisfied that it has sufficient information before it to make a decision without the need for a hearing finds the Applicant entitled to an order for possession of the property under Section 33 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.**



**Legal Member/Chair**

**21 November 2023**

**Date**