



**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/23/2485

Re: Property at 153 Alison Gardens, Blackridge, EH48 3AY (“the Property”)

Parties:

**Mr David Owen, Mrs Linda Owen, 3 Belmont Avenue, Eaglesfield, Lockerbie,
DG11 3PN (“the Applicant”)**

**Mr Iain Borthwick, 153 Alison Gardens, Blackridge, EH48 3AY (“the
Respondent”)**

Tribunal Members:

Yvonne McKenna (Legal Member) and Tony Cain (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application for the order for possession should
be granted.**

Background

1. The Applicant seeks an Eviction Order under s33 of the Act. The Application is accompanied by the following documentation: a copy of the tenancy agreement; the notice to quit; the notice under s33 of the Act; proof of service of the notice and the notice under s 11 of the Homelessness (etc) (Scotland) Act 2003. In addition the Applicant has provided various e-mail communications with solicitors and estate agents confirming the couple’s separation and the requirement for the Property to be sold.

The Case Management Discussion

2. The Application called for a Case Management Discussion (CMD) by conference call at 10am on 22 November 2023.
3. The Applicant was represented by Mr Callum McQueenie and Ms Sarah Paterson of Mavor and Company solicitors. The Respondent was present.
4. The Respondent was asked to confirm his position in respect of the application for eviction. He said that he did not oppose the application and accepted the validity and service of the Notices. He said that he had been told to “sit tight” by a Housing Officer at West Lothian Council when he had made an application to them for alternative housing.
5. The parties were advised by the Legal Member that the Tribunal requires to be satisfied not only that the ground for eviction is met, namely termination of a Short Assured Tenancy at its ish in terms of Section 33 of the Act, but also that it is reasonable in the circumstances for the Tribunal to grant the eviction order sought.
6. The Respondent lives in the Property along with his wife and their two children aged 1 and 17 years. His 17 year old daughter is in full-time education at college where she is undertaking the first year of a 2 year course. Both the Respondent and his wife are self-employed in a printing and embroidery company. The couple’s youngest child has a health condition where he is missing a bit of his brain. Mr Borthwick said that his son was getting on well. They had not required to adapt the Property to accommodate these health issues .It would be unlikely any adaption would be needed in any new property as his son was able to walk and thus far was only struggling with his speech.
7. Mr Borthwick said that in July 2022 when the Respondent’s representative had first contacted him about the possibility of the Property being sold that he had asked if he could do anything to stop that happening. He had been asked to pay an increased rent from £900 to £1100 per calendar month. Nine months later the Applicant had come back to him and said that the Property still needed to be sold. When he had contacted the Council they had told him that there was a rent freeze in place and that he did not require to pay this increased rent, so he had reduced the rent back to £900.He was still paying back money to his father-in-law as he had needed to borrow money as the Respondent’s business had been badly hit by the pandemic.
8. Mr McQueenie sought the Order for Eviction. He said that the relevant notices had been served and the tenant had failed to remove himself and accordingly the application was required.

9. In relation to the Applicant's circumstances, Mr McQueenie said that Mr and Mrs Owen had separated at the end of 2022/beginning of 2023 and required to sell the Property as part of their separation agreement. They had purchased the Property in 2008 as a family home. Mr Owen had then needed to move to Dumfries. In 2010 the Applicant had decided to sell the Property but with the market crash could not realise a figure that was proportionate to what the Property had been bought for. Mr Owen works and resides on a farm and due to their separation Mrs Owen has required to buy another property.

Findings in Fact

10. The Tribunal listened carefully to each side's position. Having done so, the Tribunal made the following findings in fact, Findings in Fact
- (i) The Applicant let the Property to the Respondent by virtue of a Short-Assured Tenancy within the meaning of the Act;
 - (ii) The Applicant competently ended the contractual tenancy between the parties by serving a notice to quit and notice under section 33 of the Act on the Respondent. The Respondent however remains in occupation;
 - (iii) The Applicant has served the relevant notice under s 11 of the Homelessness (etc) (Scotland) Act 2003;
 - (iv) The Respondent finds himself requiring the support of the housing authorities through no fault of his own. He has two children, one aged 17 years in full-time education and a one year old child with health issues.
 - (v) The Respondent has been liaising with the housing authorities and will continue to receive their support;
 - (vi) The Applicant requires to sell the Property as the couple have now separated and they require to sell the Property as part of their separation agreement. Mrs Owen has required to purchase another home due to the separation.
 - (vii) It is reasonable to make an Eviction Order.

Reasons for Decision

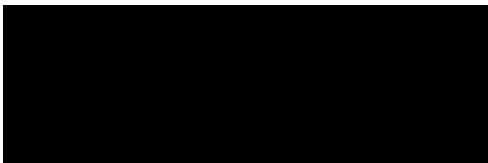
11. The Tribunal was satisfied that the Respondent understood the position and was not wishing to contest the eviction application.
12. The Tribunal was satisfied that the service of the Notice to Quit and Section 33 Notice in terms of the 1988 Act had been properly and timeously carried out by the Applicant prior to the lodging of the Tribunal application. Section 33(1) of the

Act states that an order for possession shall be granted by the Tribunal if satisfied that the short assured tenancy has reached its finish; that tacit relocation is not operating; that the landlord has given to the tenant notice stating that he requires possession of the house; and that it is reasonable to make an order for possession. The Tribunal was satisfied that all requirements of Section 33(1) had been met.

13. As to reasonableness, the Tribunal considered the oral submissions of both Mr McQueenie and Mr Borthwick at the CMD and took into account the circumstances of both parties in reaching their decision. The Tribunal was persuaded that the Applicant had a legitimate reason for requiring possession of the Property back and that the Respondent understood and accepted that reason and also that he had been made aware of the circumstances by the Applicant some time ago.
14. The Tribunal noted that the Respondent has been seeking alternative accommodation through his local authority and appears to have been receiving advice from the local authority since before he was served with the various notices in May 2023. The local authority is aware of the Respondent's housing needs and an application for housing has already been made with them by the Respondent. The Tribunal was also aware, in granting the order today, that given the terms of the Cost of Living (Tenant Protection) (Scotland) Act 2022, there was still a fairly lengthy period before the order could be enforced and that this would provide the Respondent a further opportunity to secure alternative accommodation. In all of the circumstances, the Tribunal considered that the likely impact on the Respondent of granting the eviction order was outweighed by the impact on the Applicant were the order not to be granted. The Tribunal was therefore satisfied that it was reasonable to grant the order sought.

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

20 November 2023

Date