



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 Housing (Scotland) Act 1988 (“the 1988 Act”)

Chamber Ref: FTS/HPC/EV/23/3873

Re: Property at 65 Margaretvale Drive, Larkhall, ML9 1EH (“the Property”)

Parties:

Mr James Craig, 54 Maple Drive, Larkhall, ML9 2AR (“the Applicant”)

Ms Catriona Williamson, 65 Margaretvale Drive, Larkhall, ML9 1EH (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and David Godfrey (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondent in favour of the Applicants.

Background

- 1. The Applicant seeks an order for possession of the property in terms of Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). Two short assured tenancy agreements, two AT5 notices, a Notice to Quit, Section 33 Notice, post office certificate of positing, track and trace report and Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 were lodged in support of the application.**
- 2. Sheriff Officers served a copy of the application and supporting documents on the Respondent. Both parties were notified that a Case Management Discussion (“CMD”) would take place on 6 February 2024 at 2pm by telephone conference call and that they were required to participate.**

3. The CMD took place by telephone conference call on 6 February 2024. The Applicant participated and was represented by Mr Rollo. The Respondent participated and was represented by Mr Bird.

Case Management discussion

4. Mr Bird told the Tribunal that the Respondent consents to the order for possession being granted but is seeking a delay in enforcement of the order of 8 or 10 weeks because her car is not working at present. This will present practical difficulties if she has to move out sooner than that. In response to questions from the Tribunal, Mr Bird said that the Respondent has not yet secured alternative accommodation but is hoping to be re-housed by the Council. She has an adult daughter who resides with her. Ms Williamson told the Tribunal that she works for a bank. Her daughter only has a part time job at present. She wants to be re-housed by the Council because she cannot afford to rent in the private sector any longer.
5. Mr Rollo told the Tribunal that the property is the Applicant's only rental property. They have been letting it out for 17 years but now intend to sell it to help fund their retirement, as they are both over 70 and have some medical issues. Mr Rollo said that the Applicant is sympathetic to the Respondent's situation and has no difficulty with a short delay in enforcement. However, rent arrears have accrued as the Respondent stopped paying rent when the notices were served so a significant delay would be opposed. The rent was reduced in 2017 because of the Respondent's financial difficulties from £495 to £465 per month.
6. Mr Bird told the Tribunal that it is not disputed that there are rent arrears. The CAB is assisting the Respondent in relation to financial matters. However, this should not preclude the Tribunal from granting the request for a delay in enforcement.

Findings in Fact

7. The Applicant is one of the owners and Landlords of the property.
8. The Respondent is the tenant of the property in terms of a short assured tenancy agreement.
9. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondent on 24 July 2024.
10. The Respondent resides at the property with her 19 year old daughter. She is in employment.
11. The Respondent has applied for alternative housing from the Council.
12. The Respondent has incurred rent arrears.

13. The Respondent wants to move into the social rented sector and states that she cannot afford to continue to rent in the private sector.
14. The Applicant and joint owner intend to sell the property as they have reached retirement age.

Reasons for Decision

15. The application was submitted with two short assured tenancy agreements and AT5 Notices. The initial term of the current tenancy is 24 August 2014 to 25 August 2015, with a provision that it will continue on a month to month basis after the initial term.
16. Section 32 of the 1988 Act states “(1) A short assured tenancy is an assured tenancy - (a) which is for a term of not less than 6 months; and (b) in respect of which a notice is served as mentioned in subsection (2) below. (2) The notice referred to in subsection (1)(b) above is on which – (a) is in such form as may be prescribed; (b) is served before the creation of the short assured tenancy; (c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under the tenancy; and (d) states that the assured tenancy to which it relates is to be a short assured tenancy.”
17. The Tribunal is satisfied that the tenancy agreement between the parties was for an initial term of more than 6 months and therefore meets the requirements of Section 32(1) of the 1988 Act. The Tribunal is also satisfied that an AT5 Notice was given to the Respondent prior to the creation of the tenancy. In the circumstances, the Tribunal determines that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act.
18. From the documents submitted with the application, the Tribunal is satisfied that the Applicant served a Notice to Quit and Section 33 Notice on the Respondent on 24 July 2023. The Notice to Quit called upon the Respondent to vacate the property on 25 October 2023, an ish date. The Notice contains the information prescribed by the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and complies with the terms of Section 112 of the Rent (Scotland) Act 1984. The Tribunal is satisfied that the Notice to Quit is valid and that the tenancy contract has been terminated. The Section 33 Notice was also served on 24 July 2023 and gave the Respondent more than two months’ notice that the Landlord wished to recover possession of the property. A Section 11 Notice was submitted with the application, with evidence that it was sent to the Local Authority. The Applicant has therefore complied with Section 19A of the 1988 Act.
19. Section 33 of the 1988 Act, (as amended by the Coronavirus (Recovery and Reform) (Scotland) Act 2022) states “(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 finish; (b) that tacit relocation is not operating; (d) 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 (e) that it is reasonable to make an order for possession” Subsection 2 states “The period of notice to be given under subsection (1)(d) above shall be – (1) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period; (ii) in any other case, two months”. The Tribunal is satisfied that the tenancy has reached its finish and, as the Applicant has served a valid Notice to Quit, that tacit relocation is not operating. A valid notice in terms of section 33(d) has also been served on the Respondents, giving at least two months’ notice that the Applicants required possession of the property.

20. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession, in terms of Section 33(e) of the 1988 Act.

21. The Tribunal had regard to the following: -

(a) The Respondent consents to the order for possession. She hopes to be rehoused by the Local Authority and stated that she cannot afford to continue to rent in the private sector.

(b) The Respondent has incurred rent arrears.

(c) The Applicant intends to sell the property, as he and the joint owner are over 70 years of age and require the proceeds of sale to help fund their retirement. It is their only rental property.

22. For the reasons outlined, the Tribunal is satisfied that it would be reasonable to grant the order for possession.

23. The Tribunal is also satisfied that a delay in enforcement of the order should be granted in terms of Rule 16A of the Tribunal Procedure Rules 2017. This is to allow the Respondent additional time to find alternative accommodation and vacate the property. The Respondent asked for a delay of 8 or 10 weeks. The Applicant did not oppose this but indicated that a longer delay would be opposed because of increasing rent arrears. The Tribunal determines that the eviction shall not be carried out before 12 April 2024.

Decision

24. The Tribunal determines that an order for possession of the property should be granted against the Respondent.

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.

Josephine Bonnar, Legal Member

6 February 2024