



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section**

Chamber Ref: FTS/HPC/EV/23/3461

Re: Property at 9b Rothesay Mews, Edinburgh, EH3 7SG (“the Property”)

Parties:

Mr David Strang Steel, Sluie House, Banchory, AB31 4BA (“the Applicant”)

Fay McConnell, 9b Rothesay Mews, Edinburgh, EH3 7SG (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 9b Rothesay Mews, Edinburgh, EH3 7SG under Section 33 of the Housing (Scotland) Act 1988 be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 2 October 2023, the Applicant’s solicitor applied to the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for recovery of possession the Property in terms of Rule 66 the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
2. The application was accompanied by a copy of a Short Assured tenancy dated 18 June 2008 between the Applicant on the one part and Grant Heeps

and Fay McConnell Heeps, the Respondent, on the other part, an AT5, a Notice to Quit and Section 33 Notice dated 11 July 2023 together with a proof of delivery signed by the Respondent on 12 July 2023 and a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 to Edinburgh City Council with email dated 2 October 2023.

3. On 18 October 2023 the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 20 November 2023 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 7 December 2023. The Tribunal advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 15 January 2024. This paperwork was served on the Respondent by Dale G Barrett, Sheriff Officer, Edinburgh on 21 November 2023 and the Execution of Service were received by the Tribunal administration.

Case Management Discussion

5. The Tribunal proceeded with the CMD on 15 January 2024 by way of teleconference. Mr Ruairi Peoples from Turcan Connell, Solicitors, represented the Applicant. The Respondent, Ms McConnell represented himself. She was supported by Luke Arthur from Link Living Support.
6. The Tribunal had before it a Short Assured tenancy dated 18 June 2008 between the Applicant on the one part and Grant Heeps and Fay McConnell Heeps, the Respondent, on the other part, an AT5, a Notice to Quit and Section 33 Notice both dated 11 July 2023 together with a proof of delivery signed by the Respondent on 12 July 2023 and a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 to Edinburgh City Council with email dated 2 October 2023. The Tribunal noted the terms of these documents.
7. Mr Peoples moved the Tribunal to grant an order for repossession in terms of Section 33 of the Housing (Scotland) Act 1988 (the 1988 Act”). He submitted the tenancy was relocating on a monthly basis after the initial term to 19 June 2009. He submitted that a Notice to Quit dated 11 July 2023 had been served on the Respondent on 12 July 2023 which brought the contractual tenancy to an end on 19 September 2023. The Notice under Section 33 of the 1988 Act was also dated 11 July 2023 and served on the Respondent on 12 July 2023. This gave the Respondent over two months’ notice that the Applicant required possession of the Property on 19 September 2023. The Tribunal noted Clause THREE of the tenancy agreement provided the tenancy was running on a monthly basis from 19 June 2009.
8. The Tribunal referred Mr Peoples to the AT5 which had been lodged and which although addressed to Mr Heeps and the Respondent was unsigned.

The Tribunal queried this. In response Mr Peoples repeated the terms of his paper apart to the application. He explained the Respondent and Mr Heeps, who no longer lives at the Property, were provided with an AT5 Notice before the commencement of the tenancy. The Applicant does not have a copy of the signed AT5 Notice. The agents who acted for the Applicant in respect of the commencement of the tenancy have confirmed that, given the passage of time, they no longer have the original or a copy of the signed Form AT5 Notice. Mr Peoples referred the Tribunal to Clause THIRTY-ONE of the Lease in terms of which the Respondent and Mr Heeps acknowledge having received the Form AT5 Notice prior to their signing of the Lease. The Tribunal noted that Clause THIRTY-ONE provided that "*The Tenant acknowledges receipt of Form AT5 Notice under Section 32 of the Housing (Scotland) Act 1988, a copy of which is annexed and subscribed as relative hereto.*" The Tribunal also noted that the Respondent and Mr Heeps had both signed the tenancy agreement on 18 June 2008 and that the tenancy commenced on 19 June 2008.

9. The Tribunal asked Mr Peoples to address them on reasonableness. He submitted that the Applicant wished to sell the Property. The Applicant had originally contacted the Respondent in February 2023 to advise that he wished to sell the Property. In addition, there were also rent arrears which had accrued since July 2023 and which now amounted to about £4000. On being questioned further by the Tribunal he advised that the Applicant no longer wishes to be a landlord as he has retired and wants to realise the capital from the Property as part of his retirement plan. He further explained the original rent in 2008 was £700 per month. The rent was now £800. The Applicant had a mortgage with Santander over the Property.

10. In response, Ms McConnell advised she had spoken to Crisis and that she did not have any right to dispute the application. The Property was in extreme disrepair. She advised she had started the tenancy with her husband in 2008 and had not seen an AT5. She acknowledged that she had signed the tenancy agreement. She explained she was 42 years of age and had two children aged 14 and 16. Her 14 year old daughter went to the local high school and her 16 year old son was at college. The Property had two bedrooms, but she had converted the dining room into a third bedroom. Ms McConnell explained she had an auto-immune disease and that she was no longer able to breathe in the Property. She had been a freelance events/arts manager, but had been in receipt of Employment and Support Allowance since 2020 and was applying for disability benefits. She is also in receipt of full Housing Benefit which covers all the rent.

11. On being questioned about what help she was receiving Ms McConnell explained that after the Applicant told her in February 2023 that he wanted to sell the Property she immediately started to look for another property and had spoken to the homelessness team at the Council about her housing options. She had been assessed as homeless by the Council who had told her that

she would not be offered any accommodation until her landlord was in receipt of an eviction order. She was also seeking help from Crisis.

12. Although Ms McConnell acknowledged she was in arrears, she explained that she was using the money to buy cleaning materials for the house due to the disrepair. She had had a meeting in the Property with the Applicant in about 2018 about repairs. She had also spoken to the Applicant's wife. There was nothing in writing about the repairs. The repairs had not been carried out. She had asked the Applicant for a new tenancy agreement but had not been given one. As a result of an outdated tenancy agreement, she had no rights to contest the application. She advised she felt she had been taken advantage of due to her naivety and trust.

Findings in Fact

13. The Applicant on the one part and Grant Heeps and Fay McConnell Heeps, the Respondent on the other part entered into a tenancy agreement on 18 June 2008. The tenancy agreement is headed Short Assured Tenancy.

14. The original and signed AT5 is no longer available. The Applicant's letting agents have retained an unsigned copy of the AT5 addressed to the Respondent and Mr Heeps.

15. In terms of Clause THREE of the tenancy agreement the initial tenancy ran from 19 June 2008 until the 19 June 2009 and continued on a monthly basis thereafter.

16. In terms of Clause THIRTY-ONE of the tenancy agreement the Respondent and Grant Heeps acknowledged receipt of the AT5.

17. The tenancy agreement was signed by Applicant, Mr Heeps and the Respondent on 18 June 2008. The tenancy agreement is a Short Assured Tenancy in terms of Section 32 of the Housing (Scotland) Act 1988.

18. Mr Heeps no longer resides in the Property.

19. The Applicant's solicitor served a Notice to Quit in the proper form and a Notice in terms of Section 33 (1)(d) of the Housing (Scotland) Act 1988 on 11 July 2023 on the Respondent by Recorded Delivery post. The Respondent received the Notice to Quit and the Section 33 Notice on 12 July 2023. The Notice to Quit and the Section 33 Notice expired on 19 September 2023.

20. The Short Assured Tenancy reached its end as at 19 September 2023.

21. *Tacit relocation* is not operating.
22. No other contractual tenancy is operation between the parties.
23. The Applicant's solicitor served a Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 on 2 October 2023 on Edinburgh City Council.
24. The Applicant is retiring and no longer wishes to be a landlord. He wishes to sell the Property to realise the capital in the Property as part of his retirement plan. The Applicant advised the Respondent of his intention to sell the Property in February 2023.
25. The Respondent lives in the Property with her children aged 14 and 16. The Respondent does not work and is in receipt of Employment and Support Allowance. The Respondent receives Housing Benefit to cover the full rent.
26. The Respondent has taken advice from Edinburgh City Council since February 2023 on her housing options. She has been assessed as homeless and will receive rehousing assistance when a possession order is granted. The Respondent is supported by Crisis.

Reasons for Decision

27. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the oral submissions made by the Applicant's solicitor and by the Respondent at the CMD. There was a properly constituted Short Assured Tenancy with the Respondent. The tenancy started nearly 16 years ago on 19 June 2008. The Respondent signed the tenancy agreement on 18 June 2008 and by so doing acknowledged that she had received the AT5. An unsigned copy of the AT5 had been produced. The Tribunal was satisfied that an AT5 had been served on the Respondent prior to the start of the tenancy.
28. The Tribunal was satisfied that the statutory provisions of Section 33 of the Housing (Scotland) Act 1988 had been met namely that the Short Assured Tenancy had reached its ish (termination date) on 19 September 2023;the Notice to Quit brought the contractual Short Assured Tenancy to an end and that the Applicant had given the Respondent notice in terms of Section 33(1)(d) of the Housing (Scotland) Act 1988 stating that possession of the Property was required by 19 September 2023. The Tribunal concluded that the Applicant was entitled to seek repossession of the Property under Section 33 of the Housing (Scotland) Act 1988.

29. The terms of Section 33 of the Housing (Scotland) Act 1988 would normally entitle the Applicant to a right of mandatory repossession of the Property. In terms of Schedule 1, paragraph 3 (4) of the Coronavirus (Scotland) Act 2020 the Applicant also has to satisfy the Tribunal that it is reasonable to evict. In determining whether it is reasonable to grant the order the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal considered that the Applicant was entitled to sell the Property as part of his retirement plan. Although the Tribunal considered the Respondent had two children, she made no submissions that their interests required them to stay in the Property. It appeared that she was unhappy about the state of repair of the Property which was also overcrowded. The Respondent had sensibly been taking advice on her housing options since the Applicant told her he wanted to sell the Property. It appeared to the Tribunal on the basis of the submissions made by the Respondent that she would likely receive an offer of rehousing if an order of repossession was granted. She was being supported by Crisis to help her through the process. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order noting that this application was affected by the Cost of Living (Tenant Protection) (Scotland) Act 2022 and that enforcement action to evict could not take place until after 31 March 2024. In the circumstances the Tribunal considered that in terms of Section 33 of the Housing (Scotland) Act 1988 as amended it was reasonable to grant an eviction order.

Decision

30. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

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.

Shirley Evans

17 January 2024

Legal Chair

Date