

Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 66 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/23/4597

Re: 57 Dalderse Avenue, Falkirk, FK2 7EF ("the Property")

Parties:

Ewan Lawson residing at 10 Central Park Avenue, Larbert, FK5 4RX and Barry Lawson residing at 24 Carronvale Avenue, Larbert, FK5 3LL; 18 Castle Avenue, Airth, FK2 8GA ('the Applicants')

Carolann Conroy residing at 57 Dalderse Avenue, Falkirk, FK2 7EF ('the Respondent')

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal')

Tribunal Member: Jacqui Taylor (Legal Member) Leslie Forrest (Ordinary Member)

Background

1. The Applicants applied to the Tribunal for eviction/ possession of the Rented Property under section 33 of the Housing (Scotland) Act 1988, in terms of Rule 66 of the Procedure Rules. The application was dated 31st January 2024. The application states: 'The Property was let on a Short Assured Tenancy which was terminated.'

2. Documents lodged with the Tribunal were:-

2.1 Form AT5 dated 22nd August 2017.

2.3 A copy of the Notice to Quit by Atrium Lettings Ltd on behalf of the Applicants dated 16th May 2023 giving the Tenant formal Notice to Quit the Property by 22nd November 2023.

2.4 A copy of the Section 33 Notice to the Tenant dated 16th May 2023 advising her that the Landlords require vacant possession on or before 22nd November 2023.

2.5 Section 11 Notice addressed to Falkirk Council.

2.6 An email from the Respondent dated 1st February 2024 confirming that she has received all of the paperwork and that she is in contact with the Housing Team.

3. By Notice of Acceptance by Ruth O'Hare, Convener of the Tribunal, dated 5th April 2024 she intimated that she had decided to refer the application (which application paperwork comprises documents received between 18th December 2023 and 8th March 2024) to a Tribunal.

4. The Respondent did not provide any written representations.

5. Case Management Discussion

This case called for a conference call Case management Discussion (CMD) at 14.00 on 12th August 2024.

The Applicant, Barry Lawson, attended. The Respondent also attended.

5.1 Oral Submissions by Mr Barry Lawson:

Mr Lawson advised that the original tenancy agreement was for the period of six months and then the lease continued month to month thereafter. He explained that they need to sell the Property as the mortgage is coming to an end in November this year. He agreed with Mrs Conroy's suggestion that the eviction date should tie in with the rent payment date of 21st September 2024.

5.2 Oral Submissions by Mrs Conroy:

Mrs Conroy confirmed that the original tenancy agreement was for the period of six months and then the lease continued month to month thereafter. She explained that she is not opposing the application. She had received the Section 33 Notice and Notice to Quit either by email or personal delivery a couple of days after they were sent. The Property is a three bedroom flat. She resides in the Property with her three children ages 9, 11 and 13. She has applied to the Local Authority for rehousing and has been told that as she is disabled and her daughter is autistic she is a priority on the housing list. She hopes to move to an area that is closer to her family. She has identified a house that is currently available. She confirmed that she has not been coerced into agreeing to the application. She would prefer the eviction to be granted on a day that coincides with the date that the monthly rent payment is due ie 21st September 2024.

6. The Tribunal made the following findings in fact:

6.1 The Applicants are registered Landlords of the Property.

6.2 Ewan Lawson is heritable proprietor of the Property and his title is registered in the Land Register of Scotland under title number STG55537.

6.3 The Respondent is Tenant of the Property in terms of the Short Assured Tenancy between the parties. The term of the Tenancy was from 22nd August 2017 to 21st February 2018 and monthly thereafter until terminated by either party.

6.4 The Respondent had received the Notice to Quit and section 33 notice by 18th May 2023.

7. Requirements of Section 66 of the Procedure Rules.

(a) The Tribunal confirmed that the application correctly detailed the requirements of section 66 of the Procedure Rules namely:-

(i) the name, address and registration number of the Landlords.

(ii) the name and address of the Tenant.

(b) The Tribunal confirmed that the application had been accompanied by the documents specified in Section 66(b) of the Procedure Rules:

(i) The Notice that the tenancy is a short assured tenancy (AT5).

(ii) The notice given to the tenant under section 33(1)(d) of the 1988 Act.

(iii) The Notice to Quit served by the Landlords on the Tenant.

(iv) The required notice giving Falkirk Council notice of the proceedings under section 11 of the Homelessness etc Scotland Act 2003.

The Tribunal accepted the evidence of Barry Lawson and Mrs Conroy as to the term of the tenancy. The Tribunal were mindful of the overriding objective of avoiding delay. In the circumstances the Tribunal did not require a copy of the tenancy agreement to be produced.

(c) The Tribunal confirmed that the application form had been correctly signed and dated as required by Section 66(c) of the Procedure Rules.

8. Requirements of Section 33 of the Housing (Scotland) Act 1988

The Tribunal were satisfied that the requirements of section 33 have been met, namely that:

8.1 The tenancy had reached its finish. The initial term of the tenancy was from 22nd August 2017 to 21st February 2018 and continued month to month thereafter. Notice to Quit had been served on the Tenant who confirmed that she had received it. The Notice to Quit required the Tenant to vacate the Property on 22nd November 2023, being the end of the tenancy. The required minimum forty days notice had been provided.

8.2 Tacit relocation is not operating.

8.3 The section 33 notice had been served on the Tenant who confirmed that she had received it. The section 33 Notice required the Tenant to vacate the Property on or before 22nd November 2023, being the end of the tenancy. The required minimum period of two months notice had been provided.

8.4 The Tribunal were satisfied that it was reasonable to grant the Eviction Order.

The Tribunal were mindful of the decision of Lord Greene in the case of *Cummings v Dawson* (1942) 2 All ER 653 on matters to consider when determining reasonableness:

'In considering reasonableness... it is my opinion, perfectly clear that the duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad, common sense way as a man of the world, and to come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or more weight, others may be decisive.'

The Tribunal found that it was reasonable for the eviction order to be granted given the fact that the Applicants' mortgage terms is coming to an end, the Applicants wish to sell the Property, the fact that the Respondent does not oppose the application and

that the Respondent has applied to be rehoused by the Local Authority and has been advised that her application will be treated as a priority.

9. Decision

The Tribunal determined that the requirements of section 33(1) of the Housing (Scotland Act) 1988 had been complied with and made an order for possession of the Property.

10. 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.

Jacqui Taylor

12th August 2024

Legal Member