



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/22/1480

Property at 106F Macbeth Moir Road, Musselburgh, EH21 8EE (“the Property”)

Parties:

Mr Stuart Findlay, 25 Ravensheugh Road, Musselburgh, EH21 7PX (“the Applicant”)

Miss Jennifer Findlay, 106F Macbeth Moir Road, Musselburgh, EH21 8EE (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Sandra Brydon (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 Applicant.

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”). A short assured tenancy agreement, AT5 notice, copy Notice to Quit, Section 33 Notice, Sheriff Officer certificate of service, Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 and Home Report were lodged in support of the application.**
- 2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer on 4 August 2022. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 20 September 2022 at 10am and that they were required to participate. Both were provided with a telephone number and passcode.**

3. The CMD took place by telephone conference call on 20 September 2022 at 10am. The Applicant and Respondent, who are father and daughter, participated.

Case Management discussion

4. The Tribunal noted that the tenancy agreement and AT5 notice appeared to have been signed on the same date but that the time on the agreement is 12.30pm and on the AT5 it is 1.15 pm. Both parties advised the Tribunal that the documents were signed a long time ago and it was difficult to remember. Ms Findlay said that the documents were all given to her at the same time, the AT5 and the tenancy agreement. She said that she probably forgot to sign the AT5 until later. However, she was given it before she signed the tenancy. The Tribunal noted that the Section 11 notice had been lodged but no evidence of service. Mr Findlay advised that the Notice had been issued to the Local Authority by Drummond Miller, solicitors, who had also arranged for service of the Notice to Quit and Section 33 Notice. Ms Findlay confirmed that she had received the Notices which had been served on her by the Sheriff Officers.
5. The Tribunal noted that the Applicant had sent an email to the Tribunal during the application stage which stated that he and his wife had purchased the property 13 years previously. Her daughter and partner moved in, and the plan was that they would purchase the flat when they had saved a deposit. After the relationship ended, the Respondent and her daughter continued to live there. However, the Applicant's mortgage term has expired, and he requires to sell the property to pay off the mortgage. Prior to the CMD the Applicant lodged a letter from the Royal Bank of Scotland dated 13 July 2022 which states that an extension had been granted until 8 October 2022 at which point the mortgage must be repaid or legal action will be taken to recover the sums outstanding.
6. Mr Findlay told the Tribunal that the sum of £80000 is owned to the Bank and that they will take action to repossess the property if this sum is not repaid by the deadline. He also advised that his daughter has been told that she will be deemed intentionally homeless if she moves out before an eviction order is granted. As a result, he has had to go through the legal process to recover the property.
7. Ms Findlay advised the Tribunal that she does not oppose the eviction order. She currently resides at the property with her 13 year old daughter and wants to move elsewhere. She explained that she has been in discussion with the Local Authority and has applied for Castle Rock properties, without success. She has been sent details of private lets but these have not been suitable, and she does not think that she could afford a private let anyway. She works part time as an admin officer. In response to questions from the Tribunal, Ms Findlay advised that she wants to move from the property because she is no longer safe there. There are several reasons for this. Firstly, she was attacked by a man in the stairwell. He was subsequently convicted of the assault. Secondly, she helped a friend to get a job in a local fish and chip shop. The job did not go well, and the friend made threats against the owner to Ms Findlay. She told him

and he reported the matter to the police. Ms Findlay has had threats and harassment as a result. The third reason relates to the brother of a friend who lives in the flat under the property. He arrived at the property at 6am in the morning. The friend did not let him in. Ms Findlay let him into the building, and he then forced his way into the flat. He told her that he had murdered someone. She did not believe him, but the police arrived later and confirmed it. She had to give a statement and he was convicted. However, she has been targeted because of him being in her flat when the police were looking for him. Her car has been damaged. For all these reasons she does not feel safe at the property. She stays away when she can. In response to a question from the Tribunal, Ms Findlay said that she has told the Local Authority about the threats and harassment.

Findings in Fact

8. The Applicant is the joint owner and landlord of the property.
9. The Respondent is the tenant of the property in terms of a short assured tenancy agreement.
10. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondent on 8 November 2021.
11. The Applicant intends to sell the property to repay the mortgage.
12. The Respondent resides at the property with her daughter. She does not want to remain at the property as she has been the victim of an assault, threats, and harassment there.

Reasons for Decision

13. The application was submitted with a short assured tenancy agreement and AT5 Notice. The initial term of the tenancy was 15 February 2016 until 14 August 2016, with a provision that it continued on a month to month basis thereafter.
14. 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.”

15. The Tribunal is satisfied that the tenancy agreement between the parties was for an initial term of 6 months and therefore meets the requirements of Section 32(1) of the 1988 Act. The Tribunal is also satisfied that 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.
16. 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 8 November 2021. The Notice to Quit called upon the Respondent to vacate the property on 15 May 2022. Following the initial term of the tenancy, it continued monthly with an ish on the 14th of each month. The tenant is entitled to remain in the property until the end of the day on which the tenancy comes to an end. The date specified in the Notice is the day after the ish and is therefore valid. 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 8 November 2022 and gave the Respondent more than 6 months notice. The Tribunal also notes that the Applicant has provided a copy of the Section 11 Notice sent to the Local Authority and have therefore complied with Section 19A of the 1988 Act.
17. Section 33 of the 1988 Act, as amended by the Coronavirus (Scotland) Act 2020, 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 six months, that period; (ii) in any other case, six 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 Respondent, giving at least six months’ notice that the Applicant required possession of the property.
18. 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. The Tribunal was provided with evidence that the Applicant intends to sell the property in the form of a home report. The Applicant also provided evidence that the reason for the sale is that the Applicant must pay off the mortgage over the property or legal action will be taken against him. This was confirmed by the Applicant at

the CMD. The Tribunal also noted that the Respondent does not oppose the granting of the order. She no longer feels safe at the property as a result of several incidents, including an assault. She does not feel it is suitable for her or her daughter any longer. Unfortunately, she has been unsuccessful in finding alternative accommodation. She cannot afford the private sector and has been told by the Local Authority that she will be classed as intentionally homeless if she moves out of the property before an order for possession is granted. This has placed both her and the Applicant in a difficult position.

19. In the circumstances, the Tribunal determines that it is reasonable to grant the order for possession.

Decision

20. 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

20 September 2022

