



**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/22/0430**

**Re: Property at 10 Park Road, Port Seton, EH32 0AS (“the Property”)**

**Parties:**

**Ms Louise Baird, 4 Carberry Court, Whitecraig, EH21 8PH (“the Applicant”)**

**Mr Ewan Dunlop, 10 Park Road, Port Seton, EH32 0AS (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Mary Lyden (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order against the Respondent in favour of the Applicant**

**Background**

- 1 By application to the Tribunal dated 8 February 2022 the Applicant sought an eviction order against the Respondent in respect of the Property under section 33 of the Housing (Scotland) Act 1988. In support of the application the Applicant provided the following documentation:-
  - (i) Short Assured Tenancy Agreement between the parties dated 1 June 2017 together with Form AT5;
  - (ii) Notice to Quit dated 10 June 2021 and Notice under section 33 of the Housing (Scotland) Act 1988 dated 10 June 2021 together with proof of service by Sheriff Officers; and
  - (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to East Lothian Council together with proof of service by email.

- 2 The Tribunal subsequently sought further clarification from the Applicant regarding the application. In particular the Tribunal noted that the tenancy agreement produced did not name the Respondent and was not signed by him. Furthermore a page of the AT5 appeared to be missing. By email dated 15 March 2022 the Applicant's agent, TC Young Solicitors, provided the missing page from the AT5 and the relevant page from the tenancy agreement with the Respondent's signature. The agent advised that the omission of the Respondent's name from the front page of the tenancy agreement was an administrative error.
- 3 By email dated 12 May 2022, the Tribunal requested further information from the Applicant's agent regarding the term of the tenancy agreement. It was noted that this ran from 1 June 2017 to 31 May 2017, therefore the end date was prior to the start date. The Applicant's agent responded by email dated 13 April 2022 to advise that the end date was a typographical error and that it was in fact 31 May 2018. The duration of the tenancy was therefore in excess of six months, which was sufficient to create a Short Assured Tenancy and the Respondent had signed a declaration to that effect.
- 4 By Notice of Acceptance of Application dated 3 May 2022 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for the 8 July 2022 to take place by teleconference due to the restrictions imposed by the Covid-19 pandemic. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers.

### **Case Management Discussions**

- 5 The Case Management Discussion took place by teleconference on 8 July 2022. The Applicant was present and represented by Mrs Claire Mullen of TC Young Solicitors. The Respondent was not in attendance. The Tribunal noted that he had received service of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions for joining the case conference. The Tribunal was therefore satisfied that he had received proper notification and determined to proceed in his absence.
- 6 The Legal Member explained the purpose of the Case Management Discussion. The Tribunal then proceeded to hear from Mrs Mullen on behalf of the Applicant.
- 7 Mrs Mullen advised that the Applicant sought an eviction order. The requirements of section 33 of the Act had been met. In terms of reasonableness the Applicant was seeking the order to enable her to sell the

property. She had bought it back in 2007 and had initially let it out at a rent of £900 per month. However she had then decided to sell. The property was vacant in 2017 when the Respondent approached her. He was the son of neighbours. He had asked if he could rent the property with a view to purchasing it at a later date. The Applicant had agreed to this, and to a reduced rent of £600 per month in view of the circumstances. However time had gone on and the Respondent was not in a position to purchase the property. The Applicant confirmed that the arrangement was intended to be temporary, with the Respondent purchasing the property at a future date however he had been unable to secure a mortgage.

- 8 Mrs Mullen advised that the Applicant was experiencing difficult family circumstances and required to support her daughter and granddaughter. The added stress of letting the property was exacerbating these difficulties. She no longer wished to be a private landlord and on that basis had sought to bring the tenancy to an end in order to remove herself from the lettings market.
- 9 In terms of the Respondent's circumstances Mrs Mullen explained that he was approximately 30 years old and resided with his girlfriend and two dependents aged 12 and 5. Both he and his girlfriend were believed to be in employment, with the Respondent owning his own company. There were no rent arrears outstanding and no benefits entitlement. The Respondent had been given notice in June 2021 to vacate the property in December, therefore he had more than a year to source alternative accommodation. However he had failed to vacate. In all the circumstances Mrs Mullen submitted that the order was reasonable.
- 10 In response to questions from the Tribunal Mrs Mullen advised that she understood there to have been telephone contact between the parties. The Respondent had said that he was investigating local authority accommodation but the Applicant was not aware that he had secured anything. The Applicant confirmed that there had been contact with the Respondent and she had tried to assist him with rehousing by identifying rental properties in the area. There had been the option of one property but the Respondent considered the rent to be too high. The Applicant confirmed that she understood there to be rental properties still available in the area however the Respondent wished to be rehoused with the local authority. She understood the local authority would require the eviction order to be granted, at which point the Respondent and his family could be rehoused.
- 11 Mrs Mullen further explained that the Applicant had one other property that she rented out. She was also looking to repossess and sell that property but was focusing on one application at a time due to the stress of the process.

### **Relevant Legislation**

- 12 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Housing (Scotland) Act 1988, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020

**33 Recovery of possession on termination of a short assured tenancy.**

(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; and

(c) . . . . .

(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.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) 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.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.

**Findings in Fact and Law**

13 The Applicants entered into a Short Assured Tenancy Agreement with the Respondent which commenced on 1 June 2017.

- 14 The end date of the tenancy is stated on the tenancy agreement as 31 May 2017.
- 15 The Respondent signed a declaration confirming that the tenancy was a Short Assured Tenancy, being for no less than six months.
- 16 The end date of 31 May 2017 was an administrative and minor error. The parties were in agreement that the end date of the tenancy was 31<sup>st</sup> May 2018. The tenancy thereafter continued by tacit relocation on a month by month basis.
- 17 The tenancy between the parties was therefore a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 18 On 11 June 2021 the Applicant delivered a Notice by Sheriff Officers under section 33 of the Housing (Scotland) Act stating that the Applicant required the property back by 31 December 2021.
- 19 On 11 June 2021 the Applicant delivered a Notice to Quit to the Respondent by Sheriff Officers which sought to terminate the tenancy on 31<sup>st</sup> December 2021. The Notice to Quit was in the prescribed form. 31<sup>st</sup> December 2021 is a valid ish date.
- 20 The provisions of section 33 of the Housing (Scotland) Act 1988 have been met.
- 21 The Applicant purchased the property in 2007. The property was let at a rent of £900 per month.
- 22 The Applicant intended to sell the property in 2017. The Respondent approached the Applicant with an offer to let the property on a temporary basis pending his purchase of the house.
- 23 The Applicant reduced the rent from £900 to £600 per month in terms of the tenancy agreement between the parties.
- 24 The Respondent is approximately 30 years old and resides in the property with his partner and two dependents aged 12 and 5.
- 25 Both the Respondent and his partner are in employment.
- 26 The Respondent is seeking accommodation with the local authority.
- 27 The Applicant has made attempts to assist the Respondent in obtaining alternative accommodation.

- 28 The Applicant requires to sell the property to remove herself from the lettings market and reduce stress due to her family circumstances.
- 29 It is reasonable to make the order sought by the Applicant.

### **Reasons for Decision**

- 30 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Respondent had been given the opportunity to participate in the proceedings but had chosen not to do so. There was therefore no issues to be resolved that would require a hearing to be fixed.
- 31 The Tribunal was satisfied that the tenancy between the parties was a short assured tenancy, and that the Respondent had been served with a valid Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988. The requirements of section 33 were therefore complied with. The issue for the Tribunal to determine thereafter was whether it was reasonable in all the circumstances to grant an eviction order.
- 32 The Tribunal had no reason to doubt the credibility of the evidence put forward by the Applicant and the Respondent had not put forward anything to contradict her account of the circumstances surrounding the tenancy. The Tribunal was therefore satisfied that, having regard to the background outlined by the Applicant, that the arrangement between the parties was a temporary one and conditional on the purchase of the property by the Respondent. The Applicant had gone so far as to reduce the rent by £300 per month in order to support him with this. The Respondent had however failed to obtemper his side of the agreement. The Applicant was clearly now in a position where she no longer wished to be a private landlord, hence her desire to sell the property in order to reduce stress caused by her own family circumstances and the Tribunal considered she was entitled to do so. Whilst the Tribunal noted the presence of young children within the property, it also had cognisance of the fact that the Respondent was actively seeking rehousing with the local authority. It was likely that the granting of the order would assist in that process. On that basis, taking into account the particular facts and circumstances of the case, the Tribunal determined it would be reasonable to grant the order.
- 33 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.

# R. O'Hare

8 July 2022

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Legal Member/Chair

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Date