



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/22/1339

Re: Property at 30 Queens Avenue, Largs, KA30 9HD (“the Property”)

Parties:

Mrs Lesley Matthews, Flat 1/1, 76 Stock Street, Paisley, Renfrewshire, PA2 6NH (“the Applicant”)

Ms Samantha Lang, 30 Queens Avenue, Largs, KA30 9HD (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (In absence of the Respondent)

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, Royal Mail track and trace report showing delivery on 7 September 2021 and Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 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 26 July 2022. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 2 September 2022 at 2pm 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 2 September 2022 at 2pm. The Applicant was represented by Ms Smith, solicitor. The Respondent did not participate and was not represented.

Case Management discussion

4. Ms Smith told the Tribunal that the Applicant has been in contact with the Respondent who indicated that she does not oppose the application. She stated that the property is the only rental property owned by the Applicant and was her former family home. She is seeking possession of the property as she intends to sell it. Ms Smith also advised the Tribunal that there are no rent arrears or other tenancy related issues. However, the Respondent has told the Applicant that she is keen to secure alternative accommodation from the Local Authority. She is well placed on the waiting list and hopes to be offered something soon. Currently, the Respondent resides at the property with 4 children aged between 5 and 15. The property is a small three-bedroom terraced house and is too small for the family. The Respondent hopes that the Council will offer her a bigger house. Furthermore, her housing benefit only covers £470 of her rent of £650. This is causing financial strain and she cannot afford a larger property in the private sector.
5. In response to a question from the Tribunal, Ms Smith said that the Applicant would not oppose a delay in execution of the order for possession to allow additional time for the Respondent to secure new accommodation. She suggested that an additional three months would be an appropriate period.

Findings in Fact

6. The Applicant is the owner and landlord of the property.
7. The Respondent is the tenant of the property in terms of a short assured tenancy agreement.
8. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondent on 7 September 2021.
9. The Applicant intends to sell the property.
10. The Respondent resides at the property with 4 children and hopes to be offered a larger property by the Local Authority.

Reasons for Decision

11. The application was submitted with a short assured tenancy agreement and AT5 Notice. The initial term of the tenancy was 22 June 2016 until 22 December 2016, with a provision that it continued on a month to month basis thereafter.
12. 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.”
13. 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.
14. 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 7 September 2021. The Notice to Quit called upon the Respondent to vacate the property on 22 March 2022, being an ish date. It 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 7 September 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.
15. 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 Applicants have 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.

16. 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. As the Respondent did not participate in the CMD, the only information available to the Tribunal about her circumstances was provided by the Applicant's solicitor. The Tribunal noted that, although there are no rent arrears, the Respondent's housing benefit only covers £470 of her rent charge of £650. The property is a relatively small three-bedroom property which is occupied by the Respondent and 4 children between the ages of 5 and 15. The Respondent requires a larger house to accommodate the family. However, the cost of a larger property within the private rented sector is prohibitive. She is currently on the Council waiting list for a suitable property. The Respondent has advised the Applicant that she does not oppose the application. The Tribunal also noted that the Applicant intends to sell the property when she recovers possession.

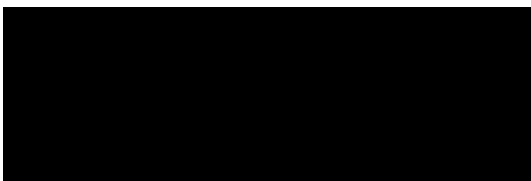
17. In the circumstances, the Tribunal determines that it is reasonable to grant the order for possession. The Tribunal is also satisfied that it is appropriate to order a delay in execution of the order for possession for a period of three months to allow additional time for the Respondent to secure alternative accommodation for her family.

Decision

18. 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

2 September 2022

