



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/22/1344

Re: Property at 22 Berrydale Road, Blairgowrie, PH10 6UA (“the Property”)

Parties:

Mrs Linda McKenzie, Garden Cottage, Wemyss Castle Estate, East Wemyss, Kirkcaldy, KY1 4TE (“the Applicant”)

Ms Elizabeth Harper, 22 Berrydale Road, Blairgowrie, PH10 6AU (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it should grant an order for eviction under section 33 of the Housing (Scotland) Act 1988.

Background

1. An application was received under rule 66 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession of the property under a short assured tenancy granted by the Applicants to the Respondent.
2. The application contained :-

- A copy of the tenancy agreement,
 - a copy of the AT5,
 - a copy of the Section 33 Notice,
 - a copy of the Notice to Quit,
 - evidence of recorded delivery service, and
 - Section 11 Notice.
3. The Notice of the Hearing had been served on the Respondent by sheriff officers on 25 July 2022.
4. The applicant's agent Ms McNicol from Messrs McNabs appeared on behalf of her client. The respondent was also in attendance. The respondent had submitted two pieces of written representations setting out her position in relation to seeking other accommodation. The applicant's agent confirmed that she had had sight of this paperwork.

Case Management Discussion

5. The applicant's agent advised that she was seeking an order for eviction.
6. The respondent confirmed that she was not opposing the application for eviction. She advised that she had obtained a new tenancy from the local authority. She had paid the rent for September and received the keys. She was currently painting and carpeting the new property and she intended to move out of the property at 22 Berrydale Road, in the next few weeks.
7. The tribunal asked the applicant's agent if she still required an order for eviction given the circumstances. She advised that her client was currently not in her own permanent accommodation, her relationship had broken down last year and she had had to leave her home at that time (it was a tied property). She required to recover the property at Berrydale Road in order that it could be sold and allow her to buy her own accommodation. The agent advised that the applicant was

anxious that there was no further delay and wished therefore to have the eviction order granted, she did not want the case continued any longer in case there was any change in the respondent's circumstances. She sought certainty about the tenancy termination.

8. The respondent confirmed that she had no objection to the order being granted against her.

Findings in Fact

9. We found the following facts established:-

10. That there was a tenancy agreement between the Applicant and the Respondent in respect of the Property.

11. The tenancy commenced on 1 February 2007 for an initial period of 6 months.

12. After the initial period of 6 months the tenancy agreement would continue on a monthly basis.

13. The AT5 Form was in the prescribed format and was dated 29 January 2006.

14. The notice to quit and section 33 notices contained the prescribed information and both were dated 22 October 2021, both sought vacant possession as at 1 May 2022. Both provided more than 6 months' notice that vacant possession was sought.

Reasons for Decision

15. Section 33 of the 1988 Act requires the tribunal to grant an order for possession under a short assured tenancy where: the tenancy has reached its end; tacit relocation is not operating; no further contractual tenancy for the time being is in existence; the landlord has given notice to the tenant that they require possession of the house; and where it is reasonable to do so.

16. We were satisfied that a short assured tenancy had been created. We were satisfied with the terms of the section 33 notice and the notice to quit. We were also satisfied that these notices had been served on the Respondent. We also noted that a section 11 notice has been sent to the local authority.
17. Having regard to the question of reasonableness, the respondent did not object to the order being granted. We noted that the applicant had been living in temporary accommodation for a number of months and was anxious to secure her own permanent accommodation in the near future; and she was concerned about any further possible delay in obtaining possession of the tenancy. The tribunal noted that the respondent had now secured a secure tenancy with the local authority, and therefore the risk of further delay in recovering the property was low, however as the respondent did not object to the order being granted and noting the concern and worry of the applicant, we are prepared to find it reasonable to grant the order.
18. We were satisfied that all of the requirements of section 33 had been met and we consider that it would be reasonable to grant an order for eviction under section 33 of the Housing (Scotland) Act 1988.

Decision

19. We grant an order in favour of the Applicant against the Respondent for recovery of possession of the property.

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.



8 September 2022

Legal Member/Chair

Date