



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/21/0573

Re: Property at 63 Hunterfield Terrace, Gorebridge, EH23 4BG (“the Property”)

Parties:

Mr John Paterson, Mrs Angela Paterson, 40 Redford Road, Edinburgh, EH13 0AE (“the Applicant”)

Miss Alison Sim, 63 Hunterfield Terrace, Gorebridge, EH23 4BG (“the Respondent”)

Tribunal Members:

Anne Mathie (Legal Member) and Melanie Booth (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession be granted but the date of the execution of the order be postponed until 23 October 2021

Background

1. An application was made dated 11 March 2021 in terms of Rule 66 of the Chamber Rules for an order for possession on termination of a short assured tenancy (along with a conjoined civil application for rent arrears ref FTS/HPC/CV/21/0575). Along with the application form, the Applicant’s representative lodged the following documents:
 - Copy tenancy agreement
 - Copy AT5
 - Copy section 33 notice
 - Recorded delivery receipt
 - Rent statement
 - Section 11 notice
 - Email intimating section 11 notice to local authority

2. A paper apart was also lodged detailing the various sections of the Housing (Scotland) Act 1988 relied upon along with details of the reasons the applicants required possession of the Property. It states that the Applicants require possession of the Property so they can occupy the same. The Applicants are in the process of selling their current accommodation and require the Property to live in until they have found alternative accommodation. Once the Applicants have purchased other accommodation they intend to sell the Property. It was submitted that, in the circumstances, it is reasonable that an order for possession be granted.
3. The Tribunal issued a Notice of Direction dated 23 March 2021 requiring the Applicant to provide written submissions which address whether, in the absence of a valid Notice to Quit terminating the tenancy contract, the Applicant had complied with Section 33 of the Housing (Scotland) Act 1988. A response was required by 9 April 2021.
4. The Applicant's representative responded by email dated 1 April 2021. The response was in the following terms:

"The Applicants and Respondent entered into a short assured tenancy on 20 January 2017 for the period of 12 months to 20 January 2018. Clause 1.1 of the tenancy agreement explicitly excludes the operation of tacit relocation. The terms of the lease do not provide for any other contractual term. The contractual tenancy came to an end on 20 January 2018 and was replaced in terms of s16 of the Act by a statutory short assured tenancy. S16(1) makes explicit reference to s32-35 in this context and s33(4) of the Act makes explicit mention of a statutory assured tenancy in the context of a short assured tenancy.

Further, s16(3) of the Act specifically excludes the need for a notice to quit to be issued in these circumstances.

In terms of s33(1) of the Housing (Scotland) Act 1988 an order for possession of a house under a short assured tenancy may be made if the Tribunal is satisfied-

 1. that the short assured tenancy has reached its ish;
 2. that tacit relocation is not operating;
 3. 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.

The short assured tenancy reached its ish on 20 January 2017 (noted this is likely to be an error and meant to read 20 January 2018) being the end of the contractual period and tacit relocation was not operating being specifically excluded under the terms of the lease.

Notice in terms of s33(1)(d) of the Housing (Scotland) Act 1988 was served on the Respondent by recorded delivery on 3 August stating an intention to repossess the premises on 5 February 2021.

In our submission there is no requirement for a notice to quit to be issued or any requirement to provide the prescribed information usually contained in same. The conditions of s33 have been fulfilled.

The Tribunal previously considered the issue in case reference FTS/HPC/EV/18/3439 Kyle Connor v Jacquelyn Harrington and Andrew Lambe and found there is no requirement for a notice to quit in these circumstances.”

5. The application was accepted and assigned to a case management discussion on 30 April 2021 by teleconference. The Respondent was served Notice of the application and was asked to submit any written representations by 19 April 2021.
6. The Tribunal issued a further Notice of Direction dated 19 April 2021 requiring the Applicants to provide a copy of the Home Report relating to their current residence, failing which a copy of the letter of engagement with the solicitors instructed to deal with the sale of their current residence, an update on the sale of their current residence and details of the websites etc where the sale of their current residence is advertised.
7. On 16 April 2021 the Respondent emailed the Tribunal requesting a postponement of the case management discussion. She wished to challenge the proceedings on the basis that landlords are not able to rely on the exclusion of tacit relocation from the tenancy agreement in the manner in which they have sought to do. She advised that she had contacted Dalkeith and District Citizens Advice Bureau in this regard. She advised that it was in the interests of justice that she have access to legal representation as it was a complex and unusual legal situation and that the Applicants had the benefit of legal representation. She had approached Shelter Scotland’s legal service but it was not certain whether they would have capacity to represent her. They required time to prepare her case. She further advised that she had complex physical and mental health problems and had applied to Midlothian Council for rehousing but could find herself being rehoused in inadequate and inappropriate temporary accommodation.
8. The Tribunal enquired whether the Respondent was requesting a postponement of both case management discussions and this was confirmed. The Tribunal granted the request for a postponement and a fresh date for the case management discussion was allocated to 11 June 2021.
9. The Applicant’s representative replied to the Notice of Direction dated 19 April 2021 by email dated 27 April 2021 in terms that the Applicants require to sell their current residence in order to release funds to settle a tax invoice and they require possession of the Property to reside in. They await the grant of a building warrant before their current residence can be marketed. Accordingly they cannot provide a copy of the Home Report, a letter of engagement from solicitors instructed to deal with the sale or details of where the sale is being advertised.
10. The Tribunal wrote to the Respondent on 25 May 2021 requesting that any written representations be received by 4 June 2021.

11. Written representations were received on 9 June 2021 from Shelter Scotland who were representing the Respondent. The written representations requested that the Tribunal fix a hearing in the case on the basis that there were factual matters of dispute which went towards the reasonableness or otherwise of granting the repossession order sought, reasonableness now requiring to be addressed by virtue of the Coronavirus (Scotland) Act 2020.
12. At the Case Management Discussion on 11 June 2021 both representatives asked for an adjournment for a period of a number of weeks to allow discussions to take place. The Case Management was continued until today at 2pm and parties' representatives were notified of this date and time verbally on the 11 June 2021.
13. Just shortly before the continued Case Management Discussion was due to go ahead today, the Applicants' agent contacted the Tribunal to say that the Respondent had consented to an order for possession being granted as long as it wasn't executed prior to the 23 October 2021. The Respondent's representative confirmed this by email.

Case Management Discussion

14. The Case Management Discussion did not proceed.

Findings in Fact

15. The Applicants and Respondent have entered into a short assured tenancy of the Property from 20 January 2017 until 20 January 2018.
16. The Applicants served an AT5 prior to the creation of the tenancy.
17. Tacit relocation was expressly excluded from operating.
18. Rent was payable at the rate of £595 per calendar month.
19. A section 33 Notice was served by recorded delivery post on 4 August 2020 giving the required six months notice.
20. A section 11 Notice was served on the local authority.
21. The Respondent has not vacated the Property.
22. The Parties' representatives have agreed that an order for possession be granted but suspended until 23 October 2021.

Reasons for Decision

23. The Tribunal proceeded to make a determination without a hearing in terms of Rule 18 of the Chamber Rules taking into account the written documents, the fact that both parties were legally represented and the overriding objective contained in Rule 2 of the Chamber Rules that proceedings be dealt with justly. There was nothing before the Tribunal to prevent it from making a decision based on the agreement of the Parties.

24. Section 20(6) of the Housing (Scotland) Act 1988 was repealed by Schedule 1, paragraph 3(3) of the Coronavirus (Scotland) Act 2020 enabling the Tribunal to make a suspended order for possession of the Property.

Decision

25. An order for possession is granted with a postponed date of execution to 23 October 2021.

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.



Legal Member/Chair

23 July 2021

Date