



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/22/3258

Re: Property at 16 Dunelm Park, Durham Bank, Bonnyrigg, EH19 3BY (“the Property”)

Parties:

Bonny Homes LLP, The Embankment Business Park, Vale Road, Heaton Mersey, Stockport, SK4 3GN (“the Applicant”)

Michelle Wilson, 16 Dunelm Park, Durham Bank, Bonnyrigg, EH19 3BY (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988.

- Background
 1. An application dated 1 September 2022 was submitted to the Tribunal under Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a repossession order against the Respondent upon termination of a short assured tenancy agreement.
- The Case Management Discussion
 2. A Case Management Discussion (“CMD”) took place on 27 January 2023 by conference call. The Applicant was represented by their agent, Raphael Barr of DJ Alexander. The Respondent appeared personally and represented herself.

3. The Applicant moved for the order for repossession to be granted as sought. The parties had entered into a Short Assured Tenancy Agreement. The Applicant had served a Notice to Quit and Notice in terms of section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”) on the Respondent. The Respondent had failed to remove from the Property and continued to reside therein. The Applicant required repossession of the Property. It was submitted that repossession was required in order to enable the Applicant to sell the Property. This was the last sale of a number of properties within a portfolio. The Applicant had left this property as the last to sell, to give the Respondent more time to find alternative accommodation. She had been unable to do so, and the Applicant now needed the Property back in order to put on the open market for sale.

4. The Respondent submitted that she was not refusing to move out of the Property and conceded that she and her family had probably reached the end of their time in the Property. The Respondent confirmed that she knew that the properties were being sold and that she had been trying to secure alternative accommodation but had not been successful in doing so. The Respondent had requested that she be able to purchase the Property. The market value was £250k and she had obtained a mortgage agreement in principle for £245k. This had not been accepted by the Applicant who wished to put on the open market to achieve best price. The Respondent has three children who live with her – aged 12, 26 and 27 years old. The 26-year-old is medically dependant on her.

- Findings in Fact

5. The Tribunal made the following findings in fact:

- (i) The parties entered into a Short Assured Tenancy Agreement (“the Agreement”) which commenced 1 March 2015. The Agreement stated that the start date was 1 March 2015 and the end date was 29 February 2016. Thereafter, if the Agreement is not brought to an end by either party it will run on a monthly basis until ended by either party;
- (ii) A Notice to Quit and notice under section 33 of the 1988 Act were served on the Respondent on 11 June 2022 by recorded delivery post;
- (iii) The Notice to Quit and notice under section 33 of the 1988 Act required the Respondent to remove from the Property by 29 August 2022;
- (iv) The Respondent had failed to remove from the Property and continued to reside therein;
- (v) It is reasonable to grant the order for possession.

- Reasons for Decision

6. The Tribunal was satisfied that the terms of section 33 of the said 1988 Act had been met: namely that the tenancy had reached its end; tacit relocation was not operating; a notice had been served in terms of that section giving the correct period of notice; and that it was reasonable to grant the order. Whilst the Tribunal had some sympathy with the Respondent’s circumstances and it was noted that she had resided in the Property for some time, the Applicant was entitled to sell the property on the open market and achieve best price. It would

of course be open to the Respondent to make an offer as part of that process in due course. It was noted that the Respondent was on a housing waiting list with the local authority and it was hoped that the granting of the order may assist her in being offered suitable alternative accommodation by the local authority in the short term.

- Decision
7. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988.

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.

F. Watson

Legal Member: Fiona Watson

Date: 27 January 2023