



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/22/4076

Re: Property at 19 Gorse Crescent, Bridge of Weir, PA11 3LX (“the Property”)

Parties:

Mrs Fiona Siddall, 14 Ludwig Van Beethoven, Porta D'Orba, Orba, 03790, Spain (“the Applicant”)

Ms Barbara Mallon, 19 Gorse Crescent, Bridge of Weir, PA11 3LX (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery and possession should be granted in favour of the Applicant.

Background

1. This is an application in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The application was dated 8th November 2022. The Applicant is seeking an order for recovery of possession in terms of section 33 of the Act. An application was received by the Housing and Property Chamber dated 9th January 2020.
2. On 14th February 2023, all parties were written to with the date for the Case Management Discussion (“CMD”) of 20th March 2023 at 10am by teleconferencing. The letter also requested all written representations be submitted by 7th March 2023.

3. On 16th February 2023, sheriff officers served the letter with notice of the CMD date and documentation upon the Respondent personally. This was evidenced by Certificate of Intimation dated 16th February 2023.

Case Management Discussion

4. A Case Management Discussion (“CMD”) was held on 20th March 2023 at 10am by teleconferencing. The Applicant was not present but was represented by her husband Mr Nigel Siddall. The Respondent was present and represented herself. The Respondent had her daughter in law Ms Laura Hyneman.
5. Mr Siddall said that the Applicant’s whole property portfolio is being sold. There were 19 properties but this has reduced to 5 over since April 2021. He said the Applicant has sold 4 to the occupying tenants. Of the remaining 5 properties, 1 is on the market, 1 is going on the market and three, including this property, are at the tribunal stage. Mr Siddall said that the Applicant no longer wishes to be a landlord. She has taken financial advice that she should sell off all of her properties. She lives in Spain. She is concerned about Spanish tax law. She now needs to put her money into a Spanish Compliant International Bond. Mr Siddall has been in contact with the Respondent and offered to sell the Property to her. She told him that she could not afford it. He has tried to get another investor to buy it. He had two agencies looking for investors but there has been no interest. He noted that there are no issues with the Respondent as a tenant. She has paid her rent up to date. It is only that the Applicant is concerned about this financial position that she is looking to sell the Property.
6. The Respondent does not wish to leave the Property. She has lived there for 30 years. The Property was last sold with her as a sitting tenant. It is close to her elderly father and her work. She has been frustrated with the letting agent as repairs were not being done. She was given the Mr Siddall’s email on behalf of the application and has been dealing with him directly since. She has done everything that she can to find a new property. She was told by her local authority to go back to them once the Tribunal had made their decision. The Tribunal noted that this case falls under the Cost of Living (Tenant Protection)(Scotland) Act 2022. This means that an Order cannot be enforced for 6 months after the date it is granted.
7. The Tribunal gave consideration to the duration that the Respondent had been in the Property but noted that she was served at Notice to Quit together with a Section 33 Notice on 14th July 2022. This order will not be able to be enforced for 6 months. Which allows her a substantial period of time to search for another property. The Respondent was actively seeking alternative accommodation with her local authority.

Findings in Fact

8. The parties entered into a Short Assured Tenancy on 18th July 2007 for a until 18th July 2008 and on a month to month basis thereafter. An AT5 was signed

by both parties on 1st July 2007. The rent payments of £400 are due each month.

9. The Housing and Property Chamber received an Application date 8th November 2022.
10. A Notice to Quit and Section 33 Notice were served on the Respondent on 14th July 2022 with vacant possession required as at 18th September 2022.
11. The Applicant requires the Property to sell it. She has been given financial advice to sell her properties and buy a bond. This is to do with Spanish tax law. She lives in Spain.
12. The Applicant has sold 14 out of 19 of her properties to allow for the bond to be bought. Out of the remaining five, three at the tribunal stage, one is being marketed and one is being made ready to market.
13. The Applicant has offered to sell the Property to the Respondent but the Respondent said that she could not do that.
14. The Applicant has tried to find an investor to buy the Property with the Respondent as a sitting tenant. The Applicant has done this through two letting agents but this has been unsuccessful.
15. The Respondent is trying to find alternative accommodation. She was to contact her local council again after the decision of this CMD.

Reasons for Decision

16. The Tribunal was satisfied that there were no other issues of reasonableness before them and that the notices had been served in an appropriate manner and that a Short Assured Tenancy had been entered into by the parties. Given this the Tribunal was satisfied all appropriate paperwork had been served the Order for repossession was granted.

Decision

17. The Applicant is entitled to an Order for recovery of possession.

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.



20th March 2023

Legal Member/Chair

Date