



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/23/1006

Property at 56 Lammermuir Crescent, Haddington, EH41 4AL (“the Property”)

Parties:

Messrs Ian Glass, 16 Knowes Road, Haddington, EH41 3RQ (“the Applicant”)

Mr Stuart Davidson, Ms Joanne Davidson (Previously Swain), 56 Lammermuir Crescent, Haddington, EH41 4AL (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondents 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 notices, Notices to Quit, Section 33 Notices, Post office certificates of posting and track and trace reports 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 Respondents by Sheriff Officer. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 27 June 2023 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 27 June 2023. The Applicant was represented by Ms Donnelly, solicitor. The Respondents were represented by Mr Coull from the CAB. A related application under reference CV/23/1007 was also discussed.

Case Management discussion

4. Mr Coull told the Tribunal that the application for possession of the property is not opposed. He confirmed that the Respondents have no issues to raise regarding the application paperwork and Notices.
5. Ms Donnelly told the Tribunal that the main reason for the application is that the property is to be sold. The Applicant is a firm owned by two sisters, now in their 60's. The firm operated a garage and had a number of rental properties. The garage and two of the properties have already been sold and this property is next. The partners are reducing their portfolio with a view to retirement. Ms Donnelly also advised the Tribunal that there are rent arrears of over £5000. The rent account has been in arrears since 2015 and payments have often been sporadic. Payment arrangements have been made but not maintained. The high level of arrears has had an impact on the firm's finances.
6. Mr Coull advised the Tribunal that the Respondents have had financial problems which have led to rent arrears. However, Mrs Davidson is due to start a part time job which will improve this situation. Mr Davidson has recently been discharged from a trust deed. The Respondents now intend to make an application for a debt arrangement scheme. Mr Davidson earns £2122 net per month, and they have two children aged 4 and 6. They are not entitled to any benefits, except child benefit, and had to make monthly payments to the Trust deed. The Respondents have approached the Local Authority for re-housing and are due to speak to the housing officer if the eviction order is granted. It is hoped that they will be re-housed in the area so that the children can continue to attend the same school.

Findings in Fact

7. The Applicant is the owner and landlord of the property.
8. The Respondents are the tenants of the property in terms of a short assured tenancy agreement.
9. The Applicant served Notices to Quit and Notices in terms of Section 33 of the 1988 Act on the Respondents on 29 August 2022.
10. The Respondents reside at the property with their children aged 4 and 6.
11. The Respondents have experienced financial difficulties.

12. The Respondent's financial difficulties have led to rent arrears. They currently owe the sum of £5146.
13. The Applicant intends to sell the let property as the partners of the firm are planning to retire.
14. The Respondents hope to be offered alternative accommodation by the Local Authority.

Reasons for Decision

15. The application was submitted with a short assured tenancy agreement and two AT5 Notices. The initial term of the tenancy was six months from 18 December 2013 until 17 June 2013.
16. 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."
17. 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 Notices were given to the Respondents 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.
18. 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 Respondents on 29 August 2022. The Notice to Quit called upon the Respondents to vacate the property on 17 December 2022, an ish date. The Notice 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 29 August 2022 and gave the Respondents more than 2 months notice that the Landlord wished to recover possession of the property. A Section 11 Notice was submitted with the application, with evidence that it was sent to the Local Authority. The Applicant has therefore complied with Section 19A of the 1988 Act.
19. Section 33 of the 1988 Act, (as amended by the Coronavirus (Recovery and Reform) (Scotland) Act 2022) 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 two months, that period; (ii) in any other case, two months”. The Tribunal is satisfied that the tenancy has reached its finish and, as the Applicant has 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 Respondents, giving at least two months’ notice that the Applicant required possession of the property.

20. 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.

21. The Tribunal had regard to the following: -

- (a) The Respondents do not oppose the application and are actively seeking alternative accommodation. They have contacted the Local Authority and hope to be re-housed by them.
- (b) The Respondents have two young children but are hopeful that they will be offered alternative accommodation in the area so that the children can stay at the school they currently attend.
- (c) The First Respondent is in employment and the Second Respondent is due to start work. They are not dependant on state benefits.
- (d) There are arrears of rent of £5146. These have been caused by financial problems. These financial problems should improve when the Second Respondent starts work and the Respondents make an application for a debt arrangement programme
- (e) The Applicant is selling its assets so that the partners can retire. The Applicant has been affected by the rent arrears.

22. For the reasons specified, the Tribunal is satisfied that it would be reasonable to grant the application.

23. The Tribunal is satisfied that the Applicant has complied with the provisions of the 1988 Act and that it would be reasonable to grant the order.

Decision

24. The Tribunal determines that an order for possession of the property should be granted against the Respondents.

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

Josephine Bonnar, Legal Member

27 June 2023