

Housing and Property Chamber
First-tier Tribunal for Scotland



**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/18/1469

**Re: Property at 10 Croftpark Street, Bellshill, Lanarkshire, ML4 1EY (“the
Property”)**

Parties:

SMC Property Rentals, 169 Main Street, Bellshill, ML4 1AH (“the Applicant”)

**Mr Sarim Arshad, Mrs Aamna Sarim, 10 Croftpark Street, Bellshill, Lanarkshire,
ML4 1EY (“the Respondents”)**

Tribunal Member:

George Clark (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application should be decided without a hearing
and that the application for recovery of possession should be granted**

Background

By application, received by the Tribunal on 13 June 2018, the Applicant sought an Order for Possession of the Property.

The application was accompanied by a copy of a Short Assured Tenancy Agreement in respect of the Property, dated 28 May 2016, with Supplemental Agreements made on 11 October 2016 and 15 September 2017, extending the initial six-month period of let to 27 May 2018. It was also accompanied by a copy AT5 Notice dated 28 May 2016 and by copies of a Notice to Quit and a Notice given under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”), both Notices being dated 2 February 2018, requiring the Respondents to remove from the Property by 27 May 2018.

By letter, dated 1 August 2018, the Parties were advised that the Tribunal would hold a Case Management Discussion on 31 August 2018 and the Respondents were invited to make written representations in response to the application by 21 August 2018.

The Respondent, Mrs Sarim made written representations by e-mails received by the Tribunal on 30 and 31 August 2018. The Tribunal agreed to accept these representations, although they were submitted after the deadline indicated in the letter of 1 August 2018.

The Respondent, Mrs Sarim, stated that she suffered from a chronic condition and had complex health needs. As a result, the Respondents had been unable to vacate the Property on the expiry of their tenancy agreement, but they had been making a consistent effort to move out as soon as possible. Mrs Sarim attached various documents, including letters from healthcare professionals and a head teacher, recommending that single level living in a detached house would best enable the Respondent, Mrs Sarim, to manage her condition and that the house should be within the catchment area of her son's school. The documentation also included paperwork supporting the Respondents' statement that they had been attempting to find alternative accommodation, and a letter from North Lanarkshire Council, dated 10 July 2018, confirming that the Respondents are currently on the General waiting list for rehousing, but that it was very unlikely that the Council would be in a position to make an offer of housing in the near future.

Case Management Discussion

A Case Management Discussion was held by way of a tele-conference at Glasgow Tribunals Centre on the afternoon of 31 August 2018. The Applicant was represented by Mr Dominic Coyle of Austin Lafferty, solicitors, 213 Edinburgh House, East Kilbride. The Respondents participated in the teleconference, which had been requested by the Respondents, on the grounds of Mrs Sarim's ill-health.

Mrs Sarim explained that the Respondents understood that the Applicant had met all the legal requirements for requesting an Order for Possession. They had been trying very hard to obtain a house, but at present there was nothing available which met their family's health needs. They had been in contact with their MSP and had a meeting arranged with the Council for later in the afternoon. She sought more time to try and find suitable alternative accommodation.

The Applicant's representative told the Tribunal that his clients sympathised with the Respondents' position, but his clients had instructed him to ask the Tribunal to exercise its right to make a decision on the application without a hearing and to make the Order for possession sought in the application.

Rule 17(4) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states that "The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision".

Reasons for Decision

The Tribunal was satisfied that it had before it all the information that it required in order to make a decision and that it was able to decide the application without a hearing.

Having seen copies of the Form AT5, the Notice to Quit and the Notice given under Section 33 of the 1988 Act, the Tribunal was satisfied that the tenancy was a Short Assured Tenancy, that it had reached its end, that tacit relocation was not operating, that no further contractual tenancy was operating and that the Applicant had given to the Respondent notice stating that the Applicant required possession of the Property. Accordingly, the Tribunal held that the requirements of Section 33 of the 1988 Act

had been met and that the Tribunal was required to grant the application and to make an Order for possession of the Property.

The Tribunal sympathised greatly with the Respondents' personal circumstances, but Section 33 of the 1988 Act does not allow it discretion to delay making an Order for possession where the grounds for making it have been satisfied and the Applicant requests that the Order be made. It would be for the Applicant to determine whether and when to enforce the Order when the relevant appeal period had expired.

Decision

The Tribunal decided to grant the application and to make an Order for 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.

George Clark

Legal Member/Chair

31 August 2018

Date