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/22/0685

Re: Property at 5 Lion Bank, Kirkintilloch, G66 1PH ("the Property")

Parties:

Dr Alan Hamilton, Mrs Hazel Hamilton, 8 Clathic Avenue, Bearsden, G61 2HF ("the Applicants")

Mr David Middleton, Miss Agnes Robertson, 5 Lion Bank, Kirkintilloch, G66 1PH; 5 Lion Bank, Kirkintilloch, G66 1PH ("the Respondents")

Tribunal Members:

Petra Hennig-McFatridge (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the second named Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the order for recovery of possession be granted.

A Background:

[1] The application for an order for Possession on Termination of a Short Assured Tenancy in terms of S 33 of The Housing (Scotland) Act 1988 was made on 7 March 2022 and amended to formally include the second named applicant and the second named Respondent on 9 March 2022 .

[2] The following documents were lodged by the Applicant prior to the date of the Case Management Discussion (CMD):

1. Copy Tenancy Agreement commencing 31 January 2014
2. AT5 document for Ms Robertson
3. Notices to Quit for both Respondents dated 20 April 2021 with date of removal of stated as 31 October 2021.

4. S 33 Notices to both Respondents dated 20 April.2021 with date of vacating premises of 31 October 2021.
5. Recorded delivery slip and track and trace confirmation of service of the Notices to Quit and S 33 Notices on 21 April 2022.
6. S 11 Notice to the Local Authority and email confirming sending of same on 9 March 2022.
7. Paper apart
8. Rent statement up to and including 9 April 2021.
9. Correspondence between parties including various updated rent statements as listed in the Inventory of Productions (60 pages) lodged by the Applicants on 21 July 2021 containing correspondence about rent arrears, various rent statements and reference to available properties in the area.

The documents are referred to for their terms and held to be incorporated herein.

[3] A Case Management Discussion (CMD) had been fixed for 2 August 2022 and the notification served on the Respondents on 22 June 2022 by Sheriff Officers

B The Case Management Discussion:

[4] The CMD took place on 2 August 2022. The CMD took place by teleconference and both Applicants and Mr Middleton attended. Mr Middleton advised that Ms Robertson had a virus and could not attend due to ill health but that he was able to speak for both Respondents and that they had discussed matters. The legal member explained the purpose of the Case Management Discussion.

[5] Mr Middleton stated they had not sent in any correspondence but he wished to put his position to the Tribunal at the CMD. He stated that there was no opposition to the application and there were no specific matters the Respondents wished to raise regarding reasonableness. He explained that the Respondents were grateful for the extra time the Applicants had afforded them to find alternative accommodation and that they currently have 3 applications for properties ongoing which they were interested in. He confirmed they still lived in the property and there was just the two of them. He and Ms Robertson had been actively looking for another property to move into as they appreciate that the Applicants wish to sell the property. Ms Robertson had lost her job during Covid as the company closed down but he is in full time employment and as long as it was within travelling distance to his employment they could look for a property in different local authority areas. Their own local authority had no housing stock to allocate at present and they would be prepared to look further afield In the discussion regarding whether or not an AT5 document had been served on him he stated he cannot remember all the documents but they would have all been checked when he and Ms Robertson attended the offices of the estate agents Town and Country. He remembers signing all the relevant paperwork and understood this was a Short Assured Tenancy and that the period was for one year. It had then just continued on until the present time without any changes. At the time they just dealt with Town and County and did not even know who the landlords were. He stated they both had the same correspondence and he signed the AT5 together. She was a different table. He does not know if he still has the documents somewhere. He remembers also paying the estate agent's fees and setting up a direct debit at the time all in the offices of Town and Country. He signed everything

he was given at the time. He could not remember what had been explained to them at the time. He stated that he had set up a standing order for the rent now and that he does not agree the level of arrears at present as stated by the Applicants. He stated he would ask for some further time to find alternative accommodation.

[6] The Applicants referred to the application and moved for the order. They stated all legal requirements for the S 33 application had been met and the Respondents had not moved out. With regard to the AT5 document lodged only being the copy for Ms Robertson they stated that this had all been handled by Town and County. Given the passage of time since 2014 the document for Mr Middleton could not be found but absence of evidence is not evidence of absence. The Tribunal should also, as stated in the application, take into account the signature of Mr Middleton on the tenancy agreement, which confirms in clause 19 that an AT5 had been issued. On balance the Tribunal should be satisfied a Short Assured Tenancy was created. The Applicants intend to sell the property to finance purchase of a property in future which they can stay in after the first named Applicant retires as they currently stay in a house that comes with his employment. There is a long history of rent arrears. A large payment towards the arrears had been made in the past but the arrears have started again to accrue and currently sit at £ 2,625. The Respondents have known for more than a year that the Applicants are seeking to sell the property. The documentation lodged on 21 July 2022 was intended to show the Applicants had exercised great patience. In all the circumstances it would be reasonable to grant the order. However, in light of the ongoing efforts of the Respondents to find alternative accommodation the Applicants would undertake themselves not to enforce any order for another 2 months and would have no problem if that was part of the Tribunal's order.

C Findings in Fact:

1. The Applicant and the Respondent entered into a Short Assured Tenancy on 31 January 2014 for an initial period to 30 January 2015 and continued thereafter from month to month (clause 3).
2. Document AT5 was received by both Respondents at the attendance in the office of Town and Country estate agents on 30 January 2014.
3. The notice period stated in clause 18 (1) for termination of the contractual tenancy by the landlord is 2 months.
4. Notice to Quit dated 20 April 2021 was served on the Respondents by recorded delivery on 21 April 2021 advising of the termination of the tenancy on the termination date of 31.October 2021.
5. Tacit relocation is not operating due to the Notice to Quit.
6. Notice in terms of S 33 (1) d of The Housing (Scotland) Act 1988 was served on the Respondents by recorded delivery on 21 April 2021 advising of the intention to repossess the premises on 31 October 2021.
7. Notice to the Local Authority was given in terms of S 11 of the Homelessness Etc (Scotland) Act 2003.
8. The Respondent continues to occupy the property at the date of the CMD on 2 August 2022.
9. The Respondents lives at the property without any dependents.
10. There are no specific health or access issues for the Respondents with regard to identifying alternative accommodation.

11. The Applicants seek to sell the property to purchase a property for their retirement,
12. The Applicant is reasonably entitled to use the process under S 33 to gain repossession of his property in these circumstances.
13. There is a long history of rent arrears having accrued during the tenancy period.
14. The Respondents are actively looking for alternative accommodation at present.

D Reasons for the Decision:

[7] The Tribunal considered that the material facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—
(a)in any place where a hearing may be held;
(b)by videoconference; or
(c)by conference call.
(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.
(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—
(a)identifying the issues to be resolved;
(b)identifying what facts are agreed between the parties;
(c)raising with parties any issues it requires to be addressed;
(d)discussing what witnesses, documents and other evidence will be required;
(e)discussing whether or not a hearing is required; and
(f)discussing an application to recall a decision.
(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—
(a)may make a decision without a hearing if the First-tier Tribunal considers that—
(i)having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
(ii)to do so will not be contrary to the interests of the parties; and
(b)must make a decision without a hearing where the decision relates to—
(i)correcting; or
(ii)reviewing on a point of law,
a decision made by the First-tier Tribunal.
(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The documents lodged are referred to for their terms and held to be incorporated herein.

[8] The Tribunal concluded it was not necessary to fix a hearing as the Respondent did not oppose the order being granted and the documents lodged evidenced sufficiently the matters required to determine whether the legal tests for an order in terms of S 33 of the Housing (Scotland) Act 1988 are met. The Tribunal makes the decision on the basis of the documents lodged by the Applicants and the information given at the CMD by Dr and Mrs Hamilton and Mr Morrison.

[9] The legal test for an eviction order is set out in S 33 of the Housing (Scotland) Act 1988 as amended by the Coronavirus (Scotland) Act 2020. The Coronavirus (Scotland) Act 2020 applies to this case as the Notices were served after 7 April 2020 when the Act came into force.

S 33 in the version applicable where the notice to quit and S 33 notices were served between 3 October 2020 and before 30 March 2022 stated:

33 Recovery of possession on termination of a short assured tenancy.

(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; and

(c) that no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and.

(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.

(2)The period of notice to be given under subsection (1)(d) above shall be—

(i)if the terms of the tenancy provide, in relation to such notice, for a period of more than six months, that period;

(ii)in any other case, six months.

(3)A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4)Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

(5)For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.

In short, in terms of S 33 (1) of the Housing (Scotland) Act 1988 an order for possession of the house under a Short Assured Tenancy shall be made if the Tribunal is satisfied that:

1. The short assured tenancy has reached its ish
2. That tacit relocation is not operating
3. That there is no further contractual tenancy in existence
4. That the landlord has given to the tenant notice that he requires possession of the house.
5. That it is reasonable in all the circumstances to grant the order.

[10] The facts of the case are not in dispute. Fair notice of all aspects of the Applicant's case had been provided to the Respondent. The Respondent did not oppose the granting of the order. The dates and documents served as stated above were not in dispute.

The Tribunal was satisfied on the basis of the documents lodged that that all requirements for recovery of possession in terms of the Housing Scotland Act 1988 had been complied with.

[11] The tenancy document and AT5 document show that the tenancy is a Short Assured Tenancy which has reached its ish. The Tribunal on balance of probability also finds that the AT5 document was issued not only to the second named Respondent but also to Mr Middleton. He stated he was given the same documents as Ms Robertson and that the documents were checked at the time. The documentation was dealt with by estate agents at the time and both tenants signed a declaration in clause 19 of the tenancy agreement that they had been served with an AT5 form and understood the tenancy was a Short Assured Tenancy. The Respondents at no point challenged this either in advance of or at the CMD. The Tribunal had queried the matter with the Applicants and Mr Middleton and was satisfied by the statements made by both parties that the documentation at the estate agents had been in order. The Respondents had served a notice to quit with the required notice period. Although the end date for the initial period of the Short Assured Tenancy was stated as 30 January 2015 with a monthly continuation thereafter, the Tribunal was satisfied that the Notice to Quit referring to the date when the Respondents have to remove from the property as 31 October 2021 as a valid ish date given that the previous tenancy period would have expired at midnight of 30 October 2021 and any new period started at the start of 31 October 2021. The tenants would have no doubt that the Notice to Quit clearly sought to terminate the contractual tenancy to 31 October 2021. Tacit relocation does not operate. The landlord had served on the Respondents a notice in terms of S 33 (1) d of the Housing (Scotland) Act 1988 with the required 6 months notice period. The Notice to Quit ended the contractual tenancy at an ish date and thus the tenancy became a statutory assured tenancy in terms of S 16 of the Housing (Scotland) Act 1988.

[12] Even if the formal tests of S 33 (1) of the Housing (Scotland) Act 1988 are met, the Tribunal still has to consider whether it is reasonable in all the circumstances to grant the eviction order. In this case the Tribunal notes that the reason given by the Respondent for not moving was that they were in the process of finding alternative accommodation. They had no problems with the Applicants wishing to sell the property and had confirmed that the Applicants had already given them more time to

identify suitable alternative accommodation, which they were grateful for. There was no opposition to the application and the Respondents did not put forward any reasons why it would not be reasonable to grant the order. The Applicants have a legitimate purpose in wishing to sell the property. There was no dispute that over a prolonged period during the tenancy arrears of rent were present and the Applicants had sought to assist the Respondents in addressing this issue as set out in the documentation lodged by them on 21 July 2022. The current level of arrears is disputed but the Tribunal considered that this was not a matter that required a hearing as it was not material to the assessment overall of reasonableness of the order and was not a ground for the application having been made. What the correspondence showed was that the Applicants had been cooperative with the Respondents and had been reasonable and patient in their conduct. The Respondents over all did not challenge the reasonableness of an order being granted and sought only to ensure they were provided with some further time to secure alternative accommodation. They are not bound by the location other than that any future accommodation has to be in travel distance for Mr Middleton's work and they have no health needs which would limit the type of accommodation appropriate for them.

[13] The Tribunal thus considered that on balance and taking into account all the information available it is reasonable to grant the eviction order but also to ensure that the Respondents have further time to identify alternative accommodation. The Applicants specifically stated that they have no problem with the Tribunal allowing for a further 2 months period before the order can be enforced. The tribunal ordered a delay in the execution of the order until 3 October 2022, in terms of rule 16A (d) of the 2017 rules.

Decision:
The Tribunal grants the 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.

Petra Hennig McFatridge
Legal Member/Chair

2 August 2022
Date