



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

Reference number: FTS/HPC/EV/23/3894

Order granted on 26 February 2024 in absence of the Respondent

Property: 3 Dryden View, Loanhead, Midlothian, EH20 9JW

Parties:

Ms Elisabeth Davidson, 135 West Main Street, Broxburn, EH52 5LH (“the Applicant”)

Ms Kirsty Steen, 3 Dryden View, Loanhead, Midlothian, EH20 9JW (“the Respondent”)

Tribunal Members:

Paul Doyle (Legal Member)
Eileen Shand (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) makes an order for possession of the Property in terms of section 33 of the Housing (Scotland) Act 1988.

Background

The Applicant sought recovery of possession of the Property in terms of Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Applicant had lodged with the Tribunal Form E. The documents produced were a Tenancy Agreement, a Notice to Quit and s.33 notice, both served on 18 August 2023, together with a notice under s.11 of the Homelessness (Scotland) Act 2003. A copy land certificate was lodged with the Tribunal which showed that the applicant is heritable proprietor of the Property.

Case Management Discussion

A case management discussion took place by telephone conference at 2pm on 26 February 2024. The Applicant was represented by her son, Mr M Davidson. There was no appearance by or on behalf of the Respondent.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a short-assured tenancy Agreement for the Property dated 20 June 2008. The lease initially ran to 21 December 2008.
2. The rent in terms of the Tenancy Agreement was £650 per month.
3. The Tenancy Agreement set out the grounds on which the Landlord could seek recovery of possession of the Property in terms of Schedule 5 of the 1988 Act.
4. A notice to quit and a s.33 notice were served on the Respondent on 18 August 2024. The tenancy is a short-assured tenancy and the respondent received the notice to quit and the s.33 notice timeously. The s.33 notice brought the tenancy to an end on 21 October 2023.
5. The Applicant sought recovery of possession of the Property in terms of s.33 of the Housing (Scotland) Act 1988 because the short-assured tenancy had been brought to an end on 21 October 2024 by the service of the s.33 notice.
6. The applicant requires possession of the property because it is encumbered by a mortgage and the mortgage term has ended. The applicant's mortgage payments are now more than the monthly rental received. The applicant is in her mid-70s and cannot refinance the property. It will be very difficult to sell the property if vacant possession cannot be offered.
7. The Respondent offers no resistance to this application. The Respondent received timeous notice of this case management discussion.
8. The Respondent has chosen not to provide details of his circumstances. As far as the Applicant is aware, the Respondent lives with her partner and two children, one of whom is of school age. It is not argued that it is unreasonable to grant an order for repossession of the Property. The weight of reliable evidence indicates that it is reasonable to grant an order for repossession of the Property.
9. The weight of reliable evidence indicates that it is reasonable to grant an order for repossession of the Property. The finite time for occupancy of the property as a short-assured tenancy has come to an end.
10. The Respondent has no competent answer to the application for repossession.

Reasons for the Decision

11. The Tribunal determined to make an Order for possession of the Property in terms of Section 33 of the 1988 Act. The tenancy was a short-assured tenancy. Correct notice was given which brought the short-assured tenancy to an end on 21 October 2023. The basis for possession set out in s.33 of the 1988 Act is established. The Respondent offers no stateable defence to the application. The finite time for occupancy of the Property as a short-assured tenancy has come to an end. For these reasons, and in all the circumstances, the Tribunal determined that it was reasonable to grant an Order for possession.

Decision

For the foregoing reasons, the Tribunal determined to make an Order for 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.

26 February 2024

Legal Member: Paul Doyle