



**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/23/2808

**Re: Property at 51 Norwood Avenue, Whitburn, West Lothian, EH47 8HG (“the
Property”)**

Parties:

**Mr Clark Harper, Mrs Jennifer Harper, 24 Byrehope Road, Uphall, West Lothian,
EH52 5SP (“the Applicant”)**

**Ms Eileen Kerr, 51 Norwood Avenue, Whitburn, West Lothian, EH47 8HG (“the
Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member) and Ann Moore (Ordinary Member)

Background

- 1 By application to the Tribunal the Applicants sought an eviction order against the Respondent in respect of the Property under section 33 of the Housing (Scotland) Act 1988. In support of the application the Applicants provided the following documentation:-
 - (i) Short Assured Tenancy Agreement between the parties dated 10 February 2017 together with Form AT5;
 - (ii) Notice to Quit dated 8 June 2023 together with proof of service by Sheriff Officers on 9 June 2023;
 - (iii) Notice under section 33 of the Housing (Scotland) Act 1988 dated 8 June 2023 together with proof of service by Sheriff Officers on 9 June 2023;
 - (iv) Notice under section 11 of the Homelessness (Scotland) Act 2003 to West Lothian Council together with proof of service by email;

- (v) Terms of Business relative to the sale of the property from Sneddon Morrison Solicitors and Estate Agents; and
 - (vi) Evidence of the financial position relative to the property from The Sinclair Partnership, Accountants, dated 12 August 2023.
- 2 By Notice of Acceptance of Application dated 10 October 2023 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned and a copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers.

Case Management Discussion

- 3 The Applicants were represented by Shirley Hepworth at the Case Management Discussion. Mr Harper was also in attendance. The Respondent was represented by her brother Mr Fraser Queen.
- 4 The Tribunal explained the purpose of the Case Management Discussion and the legal test and asked the parties to address it on their respective positions. For the avoidance of doubt the following is a summary of the submissions made and does not constitute a verbatim account of the discussion.
- 5 Ms Hepworth confirmed that a notice to quit had been served on the Respondent as the Applicants wished to sell the property. The Respondent had been advised of this. The Applicants required to sell due to financial difficulties. Ms Hepworth referred to the paperwork that had been submitted by the Applicants in support of this. Ms Hepworth confirmed that the property was part of a wider portfolio of approximately 8 lets and the intention was to sell the entire portfolio over the next three years. Mr Harper confirmed that the portfolio was costing the Applicants money on a monthly basis and was no longer sustainable.
- 6 Mr Queen advised that the Respondent had been the tenant of the property for a number of years. She had received correspondence from the Applicants regarding their mortgage costs and their reasons for selling the property, however Mr Queen believed that the Applicants were also seeking to avoid the costs of delivering housing to the required repairing standard. Mr Queen advised that he did not believe the smoke alarms within the property were compliant with new legislation and there were problems with poor flooring. Mr Queen therefore had concerns that there were other factors at play in the Applicants' decision to sell.
- 7 Mr Queen confirmed that the Respondent was in her 60s and her health was deteriorating. She suffered from a heart defect and COPD. She had mobility issues and required a walker to move around. Mr Queen confirmed that she had been in discussion with West Lothian Council regarding alternative

housing. She would require a ground floor property with no stairs. The Council were awaiting the Tribunal's decision before taking action. Mr Queen confirmed that the problems with the flooring had been reported by the Respondent around four years ago but had not been fixed. Mr Queen advised that the Respondent did not want to move from the property. In response to questions from the Tribunal Mr Queen advised that he did not think the Respondent had taken advice regarding the alleged disrepair in terms of what remedies may be available. Mr Queen confirmed that the Applicants had sent a contractor out to measure up for flooring however the next day the Respondent had been advised of their intention to sell.

- 8 Ms Hepworth confirmed that the smoke and heat detectors in the property were interlinked and compliant with the new legislation. However during a recent inspection to the property she had tested them and found they were not working correctly. A job had been raised with an electrician to fix the issue. Ms Hepworth advised that she was aware of the Respondent's health issues. Ms Hepworth had been made to believe that the Council would not assist with alternative housing until such time as an order was granted by the Tribunal. With regard to the flooring Ms Hepworth advised that it was laminate flooring and had become chipped in certain sections. The issue had been investigated however the Applicants had made the decision to sell the property.
- 9 Mr Harper advised that he fully understood the situation the Respondent was in and had sympathy. He advised that the Applicants were under extreme stress and dealing with a challenging situation. Their own health and wellbeing had been affected. Mr Harper confirmed that his wife had recently undergone major hip replacement surgery and was having to return to work as a result of the financial strain. Both of the Applicants required to keep working in order to sustain their property portfolio. Their health was being affected on a daily basis. Mr Harper confirmed that the Applicants had always complied with their statutory duties however they had reached a point where it was no longer affordable and they were having to use their own money to maintain the properties until such time as they could be sold.

Relevant Legislation

- 10 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Housing (Scotland) Act 1988, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

“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 ish;*
- b) that tacit relocation is not operating; and*
- (c).*
- (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.”*

Findings in Fact and Law

- 11 The Applicants entered into a Short Assured Tenancy Agreement with the Respondent the term of which was 10 February 2017 to 11 August 2017 and monthly thereafter.
- 12 The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 13 On 9 June 2023 the Applicants delivered a Notice under section 33 of the Housing (Scotland) Act, stating that the Applicant required the property back by 11 August 2023, and a Notice to Quit to the Respondent which sought to terminate the tenancy as at that date. The Notice to Quit was in the prescribed form. The Notices were served by Sheriff Officers.
- 14 The Notice to Quit terminates the tenancy as at 11 August 2023 which is a valid ish date under the terms of the tenancy agreement.
- 15 The Applicants are currently making a loss on the rental of the property, after deducting the mortgage costs and property expenses. The Applicants require to subsidise the costs of letting the property from their own funds.

- 16 The Applicants currently have a portfolio of eight properties. The Applicants intend to sell off the entirety of the portfolio within the next three years.
- 17 The Applicants intend to sell the property and have instructed Sneddon Morrison, Solicitors and Estate Agents in this regard.
- 18 The Applicants are under financial stress which is impacting on their health and wellbeing.
- 19 The Respondent suffers from health issues and reduced mobility. The Respondent resides at the property alone and is in her 60s.
- 20 The Respondent has sought assistance from West Lothian Council with regard to obtaining alternative housing. The Council will not take any action in this regard until such time as the Tribunal makes an eviction order.

Reasons for Decision

- 21 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved. The substantive facts of the matter were agreed between the parties and the Tribunal could see no requirement to consider any further evidence in order to reach a determination of the application.
- 22 The Tribunal was satisfied that the Respondent had been served with a valid Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988. The issue for the Tribunal to determine therefore was whether it was reasonable in all the circumstances to grant an eviction order.
- 23 The Tribunal accepted that the Applicants reason for terminating the tenancy was to sell the property due to the financial impact of maintaining the property, based on the submissions at the Case Management Discussion and the financial paperwork submitted with the application. The Applicants had been candid that they were financially unable to maintain the property in the long term, as they were currently incurring a monthly loss which required to be subsidised from their own funds. Whilst Mr Queen had raised the question of repairs, these seemed to be of a minor nature and should not, in the view of the Tribunal, take away the Applicants' entitlement to sell in order to mitigate their ongoing financial loss.
- 24 The Tribunal did have sympathy with the Respondent's situation and her health issues as outlined by Mr Queen. It did appear that the best option for her would be rehousing by the local authority, perhaps in a supported

environment. The Tribunal therefore concluded that the balance of reasonableness weighed in favour of the Applicants in this case however in order to assist the Respondent in obtaining alternative accommodation the Tribunal determined to suspend extract of the eviction order for a period of three months.

25 The Tribunal therefore determined to make an eviction order, with extract suspended for a period of three months.

26 The decision of the Tribunal was unanimous.

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.

Ruth O'Hare

26 March 2024

Legal Member/Chair

Date