



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/23/2874

Property at 9/6 Magdalene Gardens, Edinburgh, Midlothian, EH15 3DG (“the Property”)

Parties:

Mr Gavin McKenzie, 27 Jewel Gardens, Eskbank, Dalkeith, EH22 3FQ (“the Applicant”)

Miss Katarzyna Znaniewicz, formerly residing at 9/6 Magdalene Gardens, Edinburgh, Midlothian, EH15 3DG and now at 10 Springdale Road, Blindwells, Preston Pans, EH32 9SJ (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Eileen Shand (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 Respondent 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. A short assured tenancy, AT5, Notice to Quit, Section 33 Notice and Sheriff Officer Certificate of service were lodged with the application.
2. The parties were notified that a case management discussion would take place by telephone conference call on 11 December 2023. The Applicant was represented by Ms Richardson. The Respondent participated and was supported by her daughter.

3. Ms Richardson told the Tribunal that the Applicant instructed her to serve notice on the Respondent because he intends to sell the property. She was unable to explain why he had decided to sell or whether he has other rental properties but said that this is the only property managed by her agency. The only tenancy related issue has been some rent arrears caused by a delay in payments of benefit from the Council. There are no current arrears.
4. Ms Znaniewicz told the Tribunal that she opposed the application because she had nowhere to go. The Council told her that she would not be a priority for housing unless an eviction order is granted. The only offer she had received was for a housing association property in Broxburn. She had to decline it because she would be unable to continue to work in her current job, due to the distance. Her son also attends a local school that is close to her work and to the property. He is in Primary 6 and has health issues and behavioural problems at school. Her employer is very sympathetic and allows her time off work to deal with these issues. Her daughter also has health issues and is unable to work or study. Ms Znaniewicz works part time in a beauty salon. In addition to her part time earnings, she receives child tax credit and working tax credit. She used to receive some housing benefit although this had stopped. Her current rent charge is just under £600 per month. It is a small two bedroom flat. She needs a larger property because her daughter has to share with her and needs her own space. She cannot afford to rent a bigger property in the private sector and attempts to do this have been unsuccessful due to her limited income.
5. Following a brief adjournment, the Tribunal advised parties that the application would continue to a teleconference hearing. The Tribunal noted that the documents lodged with the application appear to be in order and the sole issue to be determined at the hearing is whether it is reasonable to grant the order for possession. The Tribunal issued a direction regarding the provision of further information and documents. Following the CMD, the Applicant submitted a brief email, stating that he had decided to sell the property for financial reasons. His company had gone into liquidation, interest rates had increased, mortgage interest relief had been withdrawn and the mortgage payments are higher than the rental income. The Applicant added that he is in a similar situation with his 5 other rental properties.
6. The parties were notified that a teleconference hearing would take place on 8 April 2024 at 10am. On 5 April 2024, the Respondent lodged copies of emails between herself and the Applicant's representative. The Applicant did not lodge further documents. The hearing took place on 8 April 2024. Ms Richardson represented the Applicant. The Respondent participated.

The Hearing

7. The Tribunal noted that the email correspondence lodged by the Respondent indicated that she had secured new accommodation from the Council and was already living there but that had not yet moved all of her belongings or returned

the keys. The Respondent told the Tribunal that she signed the tenancy for the new property on 15 March 2024. It was completely empty and she applied for a grant to move her furniture and white goods. This was refused last week. She has been taking items in suitcases by bus for the last few weeks but has not found a way to move the larger items as she cannot afford to do so. She also wants to clean and paint the property once everything has been removed. She needs at least another 2 weeks before she can return the keys. The Respondent stated that she has no objection to an eviction order being granted but has taken legal advice and understands that an order cannot be enforced for at least 6 weeks and she will have moved out by then.

8. Ms Richardson told the Tribunal that the Applicant seeks an eviction order, as there is no guarantee that the Respondent will have moved out of the property in 2 weeks and there are now rent arrears as the last rental payment has not been made. She also has concerns about the condition of the property following a recent inspection.

Findings in Fact

9. The Applicant is the owner and Landlord of the property.
10. The Respondent is the tenant of the property in terms of a short assured tenancy agreement.
11. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondent.
12. The Respondent has obtained alternative accommodation from the Local Authority and is not currently residing at the property.
13. The Applicant intends to sell the property.

Reasons for Decision

14. The application was submitted with a short assured tenancy agreement and AT5 Notice. The initial term of the current tenancy was 9 April 2015 until 9 October 2015, with a provision that it will continue on a month to month basis after the initial term.
15. 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.”

16. 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 an AT5 Notice was given to the Respondent 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.
17. 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 Respondent on 8 June 2023. The Notice to Quit called upon the Respondent to vacate the property on 9 August 2023, 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 8 June 2023 and gave the Respondent more than two 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.
18. 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 Respondent, giving at least two months’ notice that the Applicants required possession of the property.
19. 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.
20. The Tribunal had regard to the following: -

- (a) The Respondent does not oppose the order for possession although she believes that is unnecessary, as she has moved to new accommodation provided by the Local Authority.
 - (b) The Respondent has not given the Applicant notice or returned the keys. This is because she does not have the necessary funds to move her furniture and white goods to her new house. As a result, she cannot provide a definitive date for the return of the keys.
 - (c) Rent arrears are starting to accrue, as the Respondent is unable to meet the rent for both properties.
 - (d) The Applicant intends to sell the property, for financial reasons.
21. The Tribunal is satisfied that the Respondent intends to vacate the property as soon as she is able. She told the Tribunal that she has moved out and provided her new address. Furthermore, the Applicant's agent inspected the property at the end of March 2024, and noted that it appeared to be unoccupied but still full of the Respondent's belongings. However, as the Respondent has not given notice and has not found a solution to her difficulty regarding the removal of her furniture and belongings, the Tribunal is satisfied that it would be reasonable to grant the order for possession. The Respondent may delay or fail to vacate the property or return the keys and the order for possession may be required to secure vacant possession.

Decision

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

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, Legal Member

8 April 2024