



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 (“1988 Act”)

Chamber Ref: FTS/HPC/EV/22/1656

Re: 2 Lochwood Park, Kingseat, Dunfermline
 (“the Property”)

Parties:

Mr Christopher Evans, 11 Hawthorn Bank, Carnock, Dunfermline, KY12 9JS
 (“the Applicant”)

Mrs Jane Houston and Mr James Houston, both of 2 Lochwood Park, Kingseat, Dunfermline, KY12 0UX
 (“the Respondents”)

Tribunal Members:

Pamela Woodman (Legal Member) and David Fotheringham (Ordinary Member)

Present:

The case management discussion in relation to case reference FTS/HPC/EV/22/1656 took place at 10am on Friday 19 August 2022 by teleconference call (“the **CMD**”). The Applicant was not present at the CMD but was represented by Mr Russel McPhate of Morgans (“**Applicant’s Representative**”). One of the Respondents, Mrs Jane Houston, was present at the CMD. The clerk to the Tribunal was Craig Gemmell.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:

BACKGROUND

1. An application was made to the Tribunal under section 33 of the 1988 Act. The application was made in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended. More specifically, the application was

made in terms of rule 66 (*Application for order for possession upon termination of a short assured tenancy*) of the HPC Rules.

2. The order sought was an order for possession of the Property.
3. The application was dated 31 May 2022, was submitted by the Applicant's Representative and was accompanied by copies of the following:
 - a. Tenancy agreement between the Applicant and the Respondents in respect of the Property, signed but undated ("**Tenancy Agreement**"), which stated that:
 - i. it was a short assured tenancy;
 - ii. the date of entry was 9 April 2014;
 - iii. the expiry date of the initial term was 8 October 2014, being the date falling 6 months after the date of entry; and
 - iv. following completion of the initial term (and so with effect from 9 October 2014), it would continue from calendar month to calendar month until brought to an end by either party serving written notice upon the other party of a period of not less than 28 days;
 - b. Form AT5 addressed to the Respondents dated 9 April 2014 and countersigned by the Respondents on 9 April 2014 ("**Form AT5**");
 - c. "Information relating to Tenancy Deposit Schemes Scotland" signed by the Respondents and countersigned on behalf of the Applicant dated 9 April 2014;
 - d. Notice to quit addressed to the Respondents, given on behalf of the Applicant, dated 23 September 2021 and noting that the Respondents were being given formal notice to quit the Property by 8 April 2022 ("**Notice to Quit**");
 - e. Section 33(1)(d) notice addressed to the Respondents, given on behalf of the Applicant, dated 23 September 2021 notifying the Respondents that "the said lease terminates on 08 April 2022 and will not be renewed by" the Applicant and that the Applicant, as landlord of the Property, "requires possession of the said premises with effect from the said date of termination of the said lease" ("**Section 33 Notice**");
 - f. Printout from Royal Mail website of proof of delivery as at 9.47am on 24 September 2021, signed by HOUSTON, which (on the balance of probabilities) the Tribunal Members accepted related to the Notice to Quit and Section 33 Notice; and
 - g. Section 11 notice to Fife Council dated 31 May 2022 ("**Section 11 Notice**"), with covering e-mail.

4. A notice of acceptance of the application was issued by the Tribunal dated 13 June 2022 under rule 9 of the HPC Rules (“**Notice of Acceptance**”), which confirmed that the application paperwork had been received by the HPC on 31 May 2022.
5. The Tribunal Members had received a copy of the certificate of intimation from Walker Love (sheriff officers) in respect of each Respondent which confirmed that the letter with enclosures from the Tribunal had been served on each of the Respondents (personally in the case of Mrs Houston and into the hands of Mrs Houston on behalf of Mr Houston) on 21 July 2022. These letters notified each of the Respondents of the date and time of the CMD, requested written representations by 10 August 2022 and enclosed a copy of the application.
6. The Tribunal noted that the Applicant is the registered proprietor of the Property (title number FFE3118) and the registered landlord of the Property.
7. This decision arises out of the CMD.

PROCEEDINGS

8. The Applicant’s Representative explained that the Applicant had recently moved to Switzerland and that previously he had been “commuting” to Switzerland for his work. He explained that the Applicant wished to sell the Property and was intending to use the funds from the sale for his relocation to Switzerland.
9. Mrs Houston confirmed that the Respondents had not provided written submissions.
10. Mrs Houston confirmed that the Notice to Quit and Section 33 Notice had been received by the Respondents in September 2021. She confirmed that the Respondents were on the local authority list for accommodation but that no suitable alternative accommodation had yet been offered and that they had been told that they could end up in emergency housing for 12 to 18 months before any alternative accommodation might become available. She confirmed that they were also exploring private lets and was waiting to hear about one in which she had expressed interest on the same day that it came on the market. However, she noted that private lets coming on to the market were limited and those which did come on were going very quickly.
11. Mrs Houston confirmed that she and her husband, the other Respondent, and their three children resided at the Property, the children being aged 15 (still at school), 18 (recently finished college and seeking employment) and 20 (currently doing vocational training with the hope of then securing employment thereafter).
12. Mrs Houston confirmed that the Applicant had not increased the rent since the Tenancy Agreement was entered into in 2014. There was no suggestion made to the Tribunal that the Applicant had sought to do so at any time. Mrs Houston indicated that the Respondents might be able to pay a higher rent but the Applicant’s Representative indicated that, whilst it had not been discussed with the Applicant, he had been informed that the Applicant wishes to sell the Property and so this was unlikely to be acceptable to the Applicant.

FINDINGS OF FACT

13. The Form AT5 appeared on the face of it to be valid and was dated (and countersigned by the Respondents on) 9 April 2014, being the same date as (i) the commencement date of the Tenancy Agreement and (ii) the tenancy deposit scheme information acknowledgement. The term of the tenancy was for a “term of not less than six months”. In the absence of any submissions or evidence to the contrary, the Tribunal was satisfied, on the balance of probabilities, that the Form AT5 had been provided before the creation of the tenancy, and that the tenancy was a short assured tenancy as defined in section 32 of the 1988 Act.
14. The Notice to Quit brought the contractual tenancy to an end on a possible ish date (namely 8 April 2022), allowed for an adequate period of notice and contained the information prescribed in The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988. Accordingly, the Tribunal was satisfied that it met the requirements to be a valid notice to quit.
15. The Tribunal found that the Section 33 Notice gave more than 6 months’ notice of the Applicant requiring possession of the Property from the Respondents and the date on which recovery was stated as being required to be given (namely 8 April 2022) was a possible ish date. Accordingly, the Tribunal was satisfied that it met the requirements to be a valid notice under section 33(1)(d) of the 1988 Act.
16. The Tribunal was satisfied that the Notice to Quit and Section 33 Notice had been received by the Respondents in September 2021.

REASONS FOR DECISION

17. Section 33(1) of the 1988 Act (as amended and currently in force) provides that “...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;
 - 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.”
18. The Tribunal was satisfied, on the balance of probabilities, that tacit relocation was not operating (as a result of the service, and expiry of the period of notice under, the Notice to Quit) and that the short assured tenancy had reached its finish, and that the Respondents had been given notice that the Applicant required possession of the house (as a result of the service, and expiry of the period of notice under, the Section 33 Notice).

19. In considering whether or not it would be reasonable to grant an order for possession, the Tribunal took into account the following factors:

- a. all of the mandatory requirements for the grant of an order for possession had been met (including the extended periods of notice) and, had it not been for the introduction of the statutory requirement in section 33(1)(e) of the 1988 Act (during the COVID-19 pandemic) to consider whether or not the grant of such an order is reasonable (which statutory requirement was not in force when the Applicant and Respondents agreed to enter into the Tenancy Agreement), the Tribunal would have had no discretion as to whether or not to grant the order for possession;
- b. the Notice to Quit and Section 33 Notice had been served almost 11 months prior to the date of the CMD;
- c. the submission made by Mrs Houston that the Respondents had actively taken steps to seek alternative accommodation, through both the local authority and private lets, after receiving the notices in September 2021;
- d. one of the Respondents' children is under 18 and still in school; and
- e. there being no suggestion of financial hardship or material reasons for urgency in relation to the Applicant should the enforcement of the order for possession be postponed.

20. The Tribunal balanced the interests of the Applicant and the Respondents in deciding to grant the order for possession but postponing the date for enforcement until 31 December 2022 so as to allow the Applicant to recover possession of the Property but also to allow the Respondents more time in order to seek alternative accommodation and engage further with the local authority if required.

DECISION

21. The Tribunal decided that an order be granted against the Respondent for possession of the Property under section 33 of the 1988 Act but that it may not be enforced before 31 December 2022.

22. The order referred to in the preceding paragraph was intimated orally to the Applicant's Representative and one of the Respondents, namely Mrs Houston, during the CMD.

23. The Tribunal noted that this was not to say that the Applicant and the Respondents could not mutually agree a date earlier than 31 December 2022 for the Respondents to remove from the Property (for example, if the Respondents secure alternative accommodation at an earlier date), such that the Applicant would then recover possession at an earlier date (than 31 December 2022). Indeed, the Respondents are encouraged to seek alternative accommodation as quickly as possible.

24. Nothing in this decision amends or alters the terms of paragraphs 2.57 and 2.58 of the Tenancy Agreement in relation to putting up a "For Sale" board or viewing

appointments. Unless otherwise agreed between the Applicant and the Respondents (including where an earlier date for recovery of possession is agreed as described in the preceding paragraph), the “last two months of the tenancy” shall be interpreted as meaning between 1 November 2022 and 31 December 2022.

Right of Appeal

In terms of Section 46 of the Tribunals (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.

P S Woodman

19 August 2022

Legal Member (chair)

Date

