

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/22/2220

Re: Property at Number 3 Cottage, Ladyflat Farm, Duns, Berwickshire, TD11 3QX (“the Property”)

Parties:

Mrs Rhona Darling, Ladyflat, Duns, Berwickshire, TD11 3QX (“the Applicant”)

Mr Paul Houghton, Number 3 Cottage, Ladyflat Farm, Duns, Berwickshire, TD11 3QX (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Sandra Brydon (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 in terms of Section 33 of the 1988 Act. A short assured tenancy, AT5, Notice to Quit and section 33 Notice were lodged in support of the application. The Applicant also lodged letters confirming that the tenancy had been converted from a joint tenancy to a sole tenancy in 2016.**
- 2. A copy of the application was served on the Respondent by Sheriff Officer. Both parties were notified that a case management discussion (“CMD”) would take place by telephone conference call on 24 January 2023 at 2pm. Prior to the CMD, the Respondent lodged written submissions.**

3. The CMD took place on the 24 January 2023. The Applicant participated, represented by Mr Gillie, letting agent, and supported by her son, Mr Darling. The Respondent participated.

Summary of Discussion at CMD

4. In response to questions from the Tribunal, Mr Houghton told the Tribunal that the tenancy agreement and AT5 lodged with the application are the documents signed by him at the start of the tenancy. He confirmed that the tenancy had become a sole tenancy in 2016 and that he had received the Notice to Quit and Section 33 Notice which were served on him by Sheriff Officer. He had no issues to raise in relation to these documents. He confirmed that he was opposed to the application being granted.
5. Mr Gillie told the Tribunal that the property is one of 4 rented cottages, all currently occupied by tenants. One of the other three is occupied by Mr Houghton's mum. Following the death of the former Landlord, Mr Darling, in 2020, the plan was to diversify. However, these plans were affected by the pandemic. The farm, with the cottages, is now in trust. The Applicant is considering converting the property to a holiday let to provide additional funding for the farm. However, no final decision has been taken. There are no plans at present to seek possession of the other cottages. The main reason for the application is the deterioration in the relationship between the Applicant and Respondent. There have been problems over a lengthy period. Mrs Darling feels intimidated by Mr Houghton and his threats about the condition of the property. She disputes that there are still any outstanding repairs. There has been a lot of work carried out including double glazing, insulation, new doors, and gutter repairs. Mrs Darling told the Tribunal that Mr Houghton has been at her door and shouted at her. She lives alone about 200 yards from the cottage. Although rent is often paid late, there are no arrears. In response to questions from the Tribunal Mrs Darling said that she has not considered appointing the letting agent to manage the property
6. Mr Houghton said that he is 55 years of age and resides at the property alone. He is unable to work due to osteoarthritis. He wishes to stay at the property, despite its poor condition, as his mother relies on him to bring in coal, do the garden and carry out maintenance. She is 80 years of age. His mum is settled in her cottage. Although he wants to stay at the property, he has made enquiries and registered with a housing association. However, there is nothing suitable in the area. Mr Houghton denied any intimidating behaviour toward the Applicant and said that things were pleasant until Mrs Darling mocked him during a discussion about repairs. He now keeps his distance from her.
7. Following a brief adjournment, the Tribunal determined that the application should proceed to a hearing. The Tribunal noted that the only matter in dispute is whether it would be reasonable to grant the order for possession. The parties were advised that further documents could be lodged in advance of the hearing.

Further Procedure

8. The Parties were notified that a hearing would take place by telephone conference call on 19 April 2023 at 10am. Prior to the hearing, both parties lodged further information and documents.
9. The Hearing took place on the 19 April 2023. The Applicant was represented by Mr Gillie. The Tribunal also heard evidence from Thomas Darling and Grant Laidlaw. The Respondent participated.

The Hearing

Mrs Darling's evidence

10. Mrs Darling told the Tribunal that Mr Houghton had been a tenant since October 2015. The relationship between them has broken down since her husband died. Mr Houghton came to her house. He was abusive and shouting about his cottage and his mum's cottage. It was very intimidating. She told her son. He said that they would issue a notice to quit. Mr Houghton has been back at the door since then, stating that he will get a housing inspector out. Whenever the doorbell rings she is worried that he is back. When he came to the door, he shouted that he knew his rights, mentioned how much money he has paid in rent and said that she had done nothing to the property. This is not true as they have replaced windows and doors and guttering. She was scared and living on her own is worried about answering the door. Mrs Darling said that Mr Houghton has also shouted at her son. A friend of his mum told her that she no longer visits because he stomped into the house and threw down his rent money, telling his mum that she could take it to "those bastards". Mrs Darling added that she used to visit his mum but doesn't do so now in case he is there. She and his mum used to get together for coffee, but she rarely sees her now.
11. In response to questions about the condition of the property, Mrs Darling said that all 4 cottages had double glazing and central heating installed and new doors. One of the other tenants had arranged for a joiner to look at his door. She came to see the joiner about getting a price. While he was there, Mr Houghton came out and shouted at her and threatened a housing inspection. The property has also had insulation installed and the electrics upgraded. All now have a current electrical certificate. Recently, there was an issue with the heating and an engineer attended. They are waiting for the chimney to be re-lined following an inspection by a specialist in February or March. During COVID it took time to get contractors. Mr Houghton seemed to think that it was her fault. The heating engineer recently had problems getting access. This was apparently because he was staying with his mum. She only became aware of that when it was mentioned in the submission to the Tribunal.
12. Mrs Darling said that she feels intimidated and worried. She was shaking last time her doorbell rang. She is nearly 70. In response to questions from the

Tribunal, she said that the last time Mr Houghton shouted at her was when the joiner came to look at the door before the new doors were fitted. She agreed that this was about October 2021. She confirmed that the reason for the notice to quit being served was the behaviour by Mr Houghton. However, they have made enquiries with Sykes and are keen to proceed with converting the cottage to a holiday let to generate income. When asked about the other tenants she said that there are no issues with them. One is Mrs Houghton, who has lived there for 15 years. The other 2 are occupied by men and they have lived there for 16 years and 8 years. If the holiday let arrangement works out, they may do the same with the other cottages but not straight away. Maybe when they become vacant. They have no plans to seek possession of the others.

13. In response to questions from the Tribunal, Mrs Darling said that the problems with Mr Houghton started following her husband's death in June 2020. He never came to the door before that. She and her husband managed the tenancies together. She did not call the police but would have done so if she had known that they could not just serve notice to quit to get the house back. They only instructed the letting agent when they were serving the notices, to keep things right. She said that she has never been contacted by the Local Authority about the condition of the property or been contacted by the Tribunal in relation to a repairing standard application.

Mr Darling's evidence.

14. Mr Darling told the Tribunal that he lives across from the property with his family. Initially he did not see Mr Houghton much but there have been "run ins" since his dad died, and Mr Houghton has accosted him. He has jumped the fence and come down the field ranting about conspiracy theories. Another time, in June 2022, he was spraying the field, which is legal, and Mr Houghton started to gesticulate rudely. He then climbed onto the tractor and rapped the window and shouted about him poisoning things. He said that he hoped the COVID vaccine would kill Mr Darling. It was unpleasant and dangerous and Mr Darling's children were nearby. It was worrying and intimidating. When asked whether Mr Houghton gets on with the other neighbours, he said that they don't have much to do with him and that Ian has heard him shouting. When asked about the language used by Mr Houghton, he said it included the full range of dictionary expletives. He said that he is concerned about his mum living on her own, not feeling safe. One day he issued a tirade against Mr Darling's wife. When asked whether Mr Houghton helps his mum Mr Darling said that he didn't think so and that the other tenants would help her if she needed something. The coalman carries the coal round the back. In relation to the holiday let plan, he said that they had always talked about doing this to make more money for the farm as margins are tight.

Mr Laidlaw's evidence

15. Mr Laidlaw said that he is self-employed joiner. His friend had asked him to look at his door. New doors had been ordered but delayed due to the lockdown and he was going to trim the existing door so that it could open until the new

one arrived. Mrs Darling came to see him when he was there to get a quote. As she was walking away, Mr Laidlaw called her back saying "Mrs Darling". Mr Houghton came out of his door. He swore saying "She ain't no fucking darling". He shouted and was very aggressive. He couldn't get past due to a door lying on the pathway. Mr Laidlaw does not know what would have happened if he had not been there. Mrs Darling was embarrassed by him shouting obscenities. When asked about the condition of the cottages he said that they have had new windows and doors. They are typical farm cottages and liveable. Mr Houghton had damaged his door with an axe. It was all split. He said that he had done this. In response to questions from the Tribunal Mr Laidlaw said that he did not know Mr Houghton or Mrs Darling before the incident.

Mr Houghton's evidence

- 16.** Mr Houghton told the Tribunal that, if the Applicant wants him out, that is not unreasonable. He said that this is a smear campaign and that they had tried to get evidence against him by searching social media and when it failed had come up with highly debatable evidence. The real issue is the condition of the property. He told Mr Laidlaw that he had taken a chisel to the door because it was swollen shut and he could not open it without injuring himself. He said that he has never spoken to Mr Darling's wife and that the evidence about his alleged behaviour was irrelevant and smacks of desperation.
- 17.** The Tribunal asked Mr Houghton why the condition of the cottage was relevant to whether it was reasonable to grant an eviction order. In response he said that if they want to turn it into a holiday cottage so be it. He did not intend to be around for much longer. He said that the only time there had been a major fall out was when he confronted Mrs Darling about the state of the property. He raised his voice and told her to get it done or he would get a housing inspector out. The tenant at number 1 previously withheld rent because of repairs. Mr Houghton denied being threatening. In relation to the tractor incident Mr Houghton said that Mr Darling was spraying chemicals when the wind was blowing, and the chemicals were going into his house and his mums. He laughed at Mr Houghton, and this made him angry. He climbed onto the tractor and shouted. He has been to the Council 2 or 3 weeks ago and is waiting to hear back from them about inspecting the property. He has thought about a repairing standard application but not done anything about it. However, the condition of the house is bad. The bathroom is covered in mould. After he moved in, he gave Mr and Mrs Darling a list of jobs, but they have not all been done and he has waited years. He no longer wants to stay there and is not fit to bring in coal. He has been putting in bids for properties. Mrs Darling has had all that rent money. No pre-tenancy checks were carried out. He did not realise the condition until he moved in. It is uncomfortable, cold, and depressing.
- 18.** When asked about the allegations of abusive behaviour Mr Houghton said that the only incident he was aware of was when he went to the house and asked for the jobs to get done. It started as a civilised discussion then Mrs Darling mocked his accent. He raised his voice and told her in no uncertain terms that he would contact the relevant authority. He did not use aggressive language or

swear words. He did not say “ she ain’t no fucking darling” when Mr Laidlaw was there, he wouldn’t have used that expression. He can’t remember much about what took place on that occasion but did tell Mr Laidlaw that he had used a chisel on the door. When asked if he was living with his mum at present, he said that he had moved in because the heating was not working but has moved back as the weather is milder. He told the Tribunal that he helps at his mums by gardening, painting, tiling the kitchen and fixing the guttering. He also cooks for her most nights. He said that it is obvious that the relationship with the Darlings is not good and that it would be for everyone’s benefit that he moved on. However, he needs to find something suitable and is looking every day. He would prefer to live in Berwick and wants to put miles between himself and the Darlings. He has applied to a housing association and has a homelessness officer. He has a health gold pass but that doesn’t mean he will automatically get something. Mr Houghton told the Tribunal that he sustained various injuries when he fell outside the property because there were no security lights. Mrs Darling has now installed security lights outside his cottage and his mum’s but not the other 2 cottages and none at the back. He believes that the reason for the application is that he was the one who came out and asked for the work to get done. He did not have osteoarthritis until he moved into the property.

19. In response to questions from Mr Gillie, Mr Houghton said that he signed the tenancy agreement. When asked if he accepted the property to be in good repair, as per the agreement, he said that it was not his responsibility. The landlord should do a pre tenancy check. He signed in a hurry. He had been in the cottage before as he knows the previous tenant who told him the cottage was ok. It was only when he moved in that he realised the condition.

Findings in Fact

20. The Applicant is the owner and landlord of the property.
21. The Respondent is the tenant of the property in terms of a short assured tenancy agreement.
22. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondent on 22 April 2022.
23. The Respondent has been unhappy with the condition of the property since 2020 and has complained about repair issues.
24. The Respondent has shouted at the Applicant on at least 2 occasions about the condition of the property.
25. The Respondent shouted at the Applicant’s son and climbed onto his tractor in June 2022.

26. The Applicant is frightened of the Respondent and was distressed by the abusive behaviour directed toward her.
27. The Respondent has applied for alternative housing but has not succeeded in obtaining somewhere else to live.
28. The Respondent does not wish to continue to reside at the property.
29. The Applicant and her son have the intention of converting the property to a holiday let to increase the rental income.

Reasons for Decision

30. The application was submitted with a short assured tenancy agreement and AT5 Notice. The initial term of the tenancy was 27 October 2015 until 26 April 2016 with a provision that it would continue on a two monthly basis thereafter. The tenancy was originally a joint tenancy. The Tribunal was provided with a document signed by the landlord and tenants which establishes that the tenancy converted to a sole tenancy in November 2016.
31. 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.”
32. 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 AT5 Notice was given to the Respondent prior to the creation of the tenancy. The Tribunal determines that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act.
33. 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 22 April 2022. The Notice to Quit called upon the Respondent to vacate the property on 26 June 2022, 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 22 April 2022 and gave the Respondent 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 sent to the Local Authority. The Applicant has therefore complied with Section 19A of the 1988 Act.

34. Section 33 of the 1988 Act, as amended by the Coronavirus (Scotland) Act 2020 (the version in force at the date of service of the notices), 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 Applicant required possession of the property.
35. 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.
36. It is evident that the relationship between landlord and tenant has become very poor and that this appears to have been the case since 2020. This would not usually be enough to justify a decision that it is reasonable to grant an order for possession. For the most part, a landlord and tenant do not require to meet regularly. When a letting agent is instructed, there may be no direct contact. Even if there is no letting agent, visits to a let property by a landlord are infrequent and generally relate to inspections and repairs. However, the Applicant only instructed a letting agent recently, to deal with the eviction application. She and her son manage the property. They are not only the landlords of the property, but the Respondent’s neighbours. The Respondent also insists on paying his rent in cash, which results in additional direct contact between the parties.
37. The Tribunal found the Applicant and her witnesses to be credible and reliable. Their accounts of the problems experienced with the Respondent are partly corroborated by each other. Mr Laidlaw has no connection with either party and no reason to say something which is not true. Although Mr Houghton disputes the use of abusive language, he does not dispute that he has raised his voice, shouted, and confronted both Mrs and Mr Darling. He was less credible, as he became evasive when asked about the incidents involving the Darlings, saying that they were irrelevant, and answering with reluctance. It was clear from the evidence of both parties and the witnesses that there have been confrontations

and that these have caused distress to the Applicant.

38. Mr Houghton sought to persuade the Tribunal that it is his complaints about the condition of the property which have motivated the Applicant to seek possession of the property. While this may be a factor, it is the way he has gone about reporting the complaints which has led to the conflict and breakdown of the relationship. The Respondent has not approached the issue in an appropriate way. He may have valid complaints. The list of works carried out at the property over the last few years suggests that there were significant defects at the start of the tenancy. However, the Respondent has lived there for 8 years. Despite numerous threats to complain to the Council, he only reported the matter a few weeks ago. He has also failed to exercise his right to make a repairing standard application. The Tribunal is also satisfied that his behaviour has caused the Applicant distress and anxiety, whether he intended this or otherwise.
39. The Tribunal also notes that the Respondent no longer wishes to live at the property. This is largely due to the unsatisfactory condition of the property which he feels has contributed to his health issues. Although he indicated that he assists his mother with her cottage, and cooks for her, he did not claim that his presence or assistance is necessary. He intends to move away from the immediate area and hopes to be allocated accommodation by the local Housing Association in Berwick.
40. Although the Tribunal is satisfied that the Applicant intends to convert the property to a holiday let, this plan appears to be in its infancy. Furthermore, there was no evidence that the Applicant is experiencing financial hardship or that the holiday let will automatically lead to an increase in rental income.
41. For the reasons outlined in paragraphs 36 to 39, the Tribunal is satisfied that it would be reasonable to grant the order for possession. As the Respondent has not managed to secure alternative accommodation, the Tribunal determines that they should order a delay in execution of the order for possession for a period of three months in terms of Rule 16A of the Tribunal Procedure Rules.

Decision

42. The Tribunal determines that an order for possession of the property should be granted against the Respondent and orders a delay in execution of the order until 28 July 2023.

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

20 April 2023