



**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/21/2688**

**Re: Property at 4B Delta Road, Musselburgh, EH21 8EX (“the Property”)**

**Parties:**

**Ms Sally Turnham, Seton Dean House, Seton Mains, Longniddry, EH32 0PG (“the Applicant”)**

**Mrs Sadie Ralton, 4B Delta Road, Musselburgh, EH21 8EX (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member)**

**Mary Lyden (Ordinary Member)**

**Decision (In absence of the Respondent)**

**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 (“the 1988 Act”) A tenancy agreement, AT5 notice, copy Notice to Quit, Section 33 Notice and Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 were lodged in support of the application.**
- 2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 31 January 2022 at 10am by telephone conference call and that they were required to participate. Prior to the CMD a support worker from Penumbra submitted written representations on behalf of the Respondent. The CMD took place on 31 January 2022. The Applicant participated and was represented by Mr McLeod,**

solicitor. The Respondent participated and was supported by Mr Donnelly from Penumbra and her sister, Mrs Robertson.

### **The Case Management Discussion (“CMD”)**

3. Mrs Ralton advised the Tribunal that the application was opposed but that she had no issues to raise regarding the tenancy agreement or the pre-application Notices lodged by the Applicant. The Tribunal noted that the application was opposed only on the ground that it would not be reasonable to grant the order.
4. The Tribunal noted that the Applicant had lodged written submissions on the issue of reasonableness. These state that the Respondent breached the terms of her tenancy by keeping pets at the property, damaging the property, and decorating without permission. The Applicant also stated that the Respondent is unable to manage the property by herself and that the Applicant has suffered stress and anxiety because of the issues which have arisen and verbal abuse by the Respondent. At the CMD Ms Turnham advised the Tribunal that she is aware of the Respondent’s mental health problems and thinks that she was told about the schizophrenia. At the start of the tenancy there did not appear to be any tenancy related issues, but these developed over time. However, the rent is up to date and is paid direct by the Council. The Applicant previously carried out regular visits to the property but not since the March 2020 lockdown. On her last visit, she noted that a plug socket and electrical box had been pulled out of the wall in the Respondent’s son’s bedroom and that the flat did not appear well cared for. Ms Turnham advised the Tribunal that she has owned the flat for 10 years and wants to sell it when she recovers possession. In response to questions, she confirmed that the damage referred to her submissions related to the cooker, the plug point and damage caused by the pets. The property is a ground floor flat in a block of 6 and is accessed via a common close. There is a front and back garden. The Respondent has allowed the garden to become very overgrown. The Respondent’s adult son resides at the property although she had told the Respondent that she does not want him to live there as there have been drug related issues.
5. Ms Ralton advised the Tribunal that her son was living with her and everything in the house was in working order. She stated that she has had her pets since the start of the tenancy and the Applicant was aware of this. She advised the Tribunal that she was diagnosed with schizophrenia 23 years ago and could provide written confirmation of this. She has been experiencing panic attacks and has consulted her doctor. She has a Psychiatrist and a CPN. She takes medication. She also suffers from arthritis. She has been trying to obtain alternative accommodation from the Local Authority and is getting help from a Housing officer. The Local Authority is aware of her medical issues. She could not say when she will be offered a property but hoped it would be soon. However, she does not want to end up in temporary accommodation as it would be too difficult for her to move twice.
6. The Tribunal determined that the application should proceed to a hearing on the issue of reasonableness. The parties were notified that the hearing would

take place by telephone conference call on 26 April 2022 at 10am. Prior to the hearing the Applicant lodged further written submissions which mainly related to the condition of the property following a visit by her on 1 February 2022. She also lodged photographs taken during the visit. These show some damage to the property, particularly to internal doors. The property also appeared dirty and there were numerous packed boxes in the living room. The Respondent also lodged several documents including a handwritten letter from the Respondent authorising her sister to represent her in connection with the Tribunal proceedings, a copy of her medical records providing details of medical conditions and medication and letters from a Housing Officer, a mental health nurse and a social worker. The Housing officer stated that he could not confirm where the Respondent is on the waiting list or when she will be offered a house. The mental health nurse stated that the Respondent suffers from schizophrenia, depression and anxiety and has physical health problems including COPD. The Social Worker indicated that the Respondent is vulnerable and requires support from Social Work and mental health professionals.

7. The hearing took place by telephone conference call on 26 April 2022 at 10am. The Applicant participated and was supported by her husband, Mr Heron, and represented by Mr McLeod, solicitor. The Respondent did not participate but was represented by her sister, Mrs Robertson.

## **The Hearing**

8. Mrs Robertson advised the Tribunal that Mrs Ralton was admitted to hospital on Saturday (23 April 2022). A friend had visited and found her to be very unwell. She was taken to hospital by ambulance and is currently in the High Dependency Unit. She has suffered a heart attack and has pneumonia. Mrs Robertson stated that Mrs Ralton no longer opposes the eviction order. She has been told by the Local Authority that if an eviction order is granted, she will go to the top of the waiting list and will be offered a house much sooner. This is what she wants. She has already packed boxes and is ready to move. In response to questions from the Tribunal, Mrs Robertson advised that Tribunal that Mrs Ralton's son does not currently reside at the property. He is staying with his dad but visits every evening to prepare a meal for Mrs Ralton. She also confirmed that Mrs Ralton is hoping to be offered a Dunedin Canmore Housing Association property as they specialise in houses for people with disabilities and mental health issues. Their properties are allocated by the Council. She stated that Mrs Ralton does not dispute the condition of the property as shown in the photographs lodged by the Applicant. However, since that date, various family members have cleaned and hoovered the property. In response to further questions Mrs Robertson said that the Respondent would not want any delay in enforcement of the eviction order to be granted. She wants a date to be fixed so that the Local Authority will move her up the waiting list and offer her accommodation.

9. Mr McLeod and Mrs Turnham advised the Tribunal that the tenancy agreement states that no pets are allowed, without consent. Mrs Turnham became aware that pets had been introduced at the property, without permission being sought. Although she was unhappy with the situation, the animals were small, and she recognised that they were company for Mrs Ralton. She didn't insist on them being removed. However, this appeared to set a precedent for other, unauthorised uses of the property. Mrs Turnham confirmed that she still intends to sell the property. She purchased it as an investment when she inherited some money. However, she has had a lot of hassle as a landlord and has found it stressful. She doesn't own any other properties. A final decision on selling has still to be made and may depend on the market, but that is still her plan.

### **Findings in Fact**

10. The Applicant is the owner and landlord of the property.
11. The Respondent is the tenant of the property in terms of a short assured tenancy agreement.
12. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondent on 16 April 2021.
13. The Respondent resides at the property alone. She has medical conditions and mental health issues. She requires support and is on a waiting list with the Local Authority. She wants to move from the property to local authority or housing association accommodation.
14. The Applicant is considering selling the property.

### **Reasons for Decision**

15. The application was submitted with a short assured tenancy agreement and AT5 Notice. The term of the tenancy is 17 October 2017 until 16 April 2018. There is no provision for it to continue on a month to month basis, or otherwise.
16. 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.”
17. 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. In the circumstances, the Tribunal determines that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act.

18. From the documents submitted with the application, and the information provided at the CMD by the Applicant's representative, the Tribunal is satisfied that the Applicant's solicitor sent the Notice to Quit and Section 33 Notice to the Respondent by recorded delivery post. It was delivered on 16 April 2021. The Notice to Quit calls upon the Respondent to vacate the property on 16 October 2021, being an ish date. It 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 Tribunal also notes that the Applicant has provided a copy of the Section 11 Notice sent to the Local Authority and has therefore complied with Section 19A of the 1988 Act.
19. Section 33 of the 1988 Act, as amended by the Coronavirus (Scotland) Act 2020, 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 six months, that period; (ii) in any other case, six months". The Tribunal is satisfied that the tenancy has reached its finish and, as the Applicants have 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 six months' notice that the Applicant requires possession of the property.
20. 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. The Tribunal noted the following: -
  - (a) The Respondent is on a housing waiting list with the Local Authority. She has also applied to various housing associations. She wants to move from the property and does not want to reside there. She does not oppose the application for an eviction order.
  - (b) The Respondent has several physical and mental health problems. She is currently in hospital, having suffered a heart attack. She is vulnerable and requires support from her family, mental health professionals, her social worker, and the Local Authority Housing department. She has had difficulty looking after the property in recent years and has not complied fully with the terms of the tenancy agreement, particularly in relation to the keeping of pets and looking

after the property. She has already packed many of her belongings in anticipation of a move.

- (c) Although the letter from the Housing Officer of the Local Authority says that he is unable to say when she will be offered a house, the Respondent has been advised verbally that she will be much better placed on the waiting list if an eviction order is granted. Although she previously advised the Tribunal that she wanted to remain in the property until the Council were able to make her an offer, to avoid being placed in temporary accommodation, her position has changed, and she does not oppose the application.
- (d) The property is the Applicant's sole rental property. She is concerned about its condition and has experienced stress because of the problems she has encountered in recent years, as the Respondent's landlord. Although a final decision has not been made, she will probably sell the property when she has recovered possession of it. The Notices were served on the Respondent 12 months ago.

21. In the circumstances, and having regard to the information outlined above, the Tribunal is satisfied that it is reasonable to grant the order for eviction.

22. Rule 16A(d) of the Tribunal Procedure Rules states that the Tribunal can order a delay in execution of an order at any time before it is executed. The Respondent has confirmed that she does not want the Tribunal to consider a delay in execution of the eviction order.

23. The Tribunal is therefore satisfied that the Applicant has complied with the requirements of the 1988 Act and that it is reasonable to grant an order for possession of the property.

## **Decision**

24. 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**

**26 April 2022**