



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/21/3201

**Re: 11 Myreside Way, Carntyne, Glasgow, G32 6ED
 (“the Property”)**

Parties:

**Mr Fraser Conn, 24 Birkdale Crescent, Cumbernauld, G68 0JZ
 (“the Applicant”)**

**Miss Natalie Henderson, 11 Myreside Way, Carntyne, Glasgow, G32 6ED
 (“the Respondent”)**

Tribunal Members:

Pamela Woodman (Legal Member) and Sandra Brydon (Ordinary Member)

Present:

The case management discussion in relation to case reference FTS/HPC/EV/21/3021 took place at 10am on Monday 11 April 2022 by teleconference call (“**the CMD**”). The Applicant was not present but was represented by Mrs Dionne Brady of Gillespie Macandrew LLP (“**the Applicant’s Representatives**”). The Respondent was not present nor represented at the CMD. The clerk to the Tribunal was Mollie Yeats.

DECISION (in absence of the Respondent)

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

BACKGROUND

1. The Applicant made an application to the Tribunal under section 33 of the 1988 Act and 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 from the Tribunal was an order for possession against the Respondent in respect of the Property.
3. The application was dated 22 December 2021, was submitted by the Applicant's Representatives and was accompanied by various documents, including copies of the following:

- a. Paper apart which included a section entitled "Additional Information" in the following terms:

"The Respondent resides in the Property with her two children. The Respondent contacted the Applicant's wife (who is the Joint Owner of the Property) advising her that her two daughters had outgrown their single bedroom and required their own individual bedrooms. The Respondent advised the Applicant's wife that she had started the process of applying for a larger property through the Council. The Council contacted the Applicant's wife and requested that she issue the relevant Notices to end the tenancy."

- b. Agreement between the Applicant and the Respondent dated 26 January 2008 ("**Tenancy Agreement**"), stated to be a short assured tenancy agreement.
- c. Form AT5 from the Respondent (and also apparently signed by Dawn Conn) addressed to the Applicant in respect of the Property dated 24 January 2008 ("**Form AT5**").
- d. Covering letter from the Applicant's Representatives addressed to the Respondent at the Property dated 1 April 2021, stated to enclose a notice to quit and notice under section 33 of the 1988 Act.
- e. Notice to quit from the Applicant's Representatives addressed to the Respondent at the Property dated 1 April 2021 ("**Notice to Quit**") stating that the tenancy granted would terminate on 26 July 2021, and included the information required in terms of The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 (as amended).
- f. Notice under section 33 of the 1988 Act from the Applicant's Representatives addressed to the Respondent at the Property dated 1 April 2021 ("**Section 33 Notice**"), which stated that the Applicant "requires vacant possession of the [Property] on or before 26 October 2021" and giving notice that the Respondent was "required to remove [herself] together with [her] personal belongings and goods from the Property by the 26th October 2021."
- g. Posting receipt dated 1 April 2021 for post to the Respondent at the Property, and tracking information from Royal Mail which indicated that the

post had been collected from Glasgow Rutherglen DO on 8 April 2021 at 14:05, signed for by "NHENDERSON".

- h. Notice under section 11 of the Homelessness etc (Scotland) Act 2003 sent by the Applicant's Representatives to Glasgow City Council on 22 December 2021.
4. In addition, the Tribunal was provided with a letter dated 17 January 2022 from Mrs Dawn Conn, as joint owner of the Property, confirming that she had authorised the Applicant to let out the Property and provided her consent to the eviction proceedings raised in the Applicant's name only.
5. A notice of acceptance of the application was issued by the Tribunal dated 22 February 2022 under rule 9 of the HPC Rules, which confirmed that the application paperwork had been received by the Tribunal between 22 December 2021 and 17 January 2022.
6. The Tribunal Members had received a copy of the certificate of intimation issued by Andrew Mclean (sheriff officer) of Walker Love Sheriff Officers which confirmed that the letter with enclosures from the Tribunal (dated 2 March 2022) had been served on the Respondent on 3 March 2022 by depositing in the letterbox at the Property. This letter notified the Respondent of the date and time of the CMD, requested written representations by 23 March 2022 and enclosed a copy of the application.
7. The Tribunal was satisfied, on the balance of probabilities, that the Respondent had been provided with proper notification of the CMD and so it could proceed, notwithstanding her absence.
8. This decision arises out of the CMD.

PROCEEDINGS, NAMELY THE CMD

9. The Tribunal Members having considered the case paperwork provided in advance of the CMD in detail, Mrs Brady of the Applicant's Representatives was invited to address the Tribunal Members as to why it would be reasonable for the Tribunal to make an order for possession.
10. She submitted that:
 - a. It was the Respondent herself who contacted the Applicant's wife in 2019 to advise that she was seeking larger accommodation for her and her daughters;
 - b. There was no pressure to bring the tenancy to an end at that point;
 - c. In 2021, there was further correspondence from the Respondent and contact with a housing association (name unknown) with both the Respondent and the Applicant's wife;

- d. The Applicant's wife was told by the housing association that there needed to be an order for possession granted against the Respondent before her application for housing could be granted;
 - e. The Respondent had been a tenant for over 10 years and was fully aware as to why the application had been brought;
 - f. This may explain why the Respondent had made no submissions and not attended the CMD;
 - g. In the circumstances, it was reasonable to grant an order for possession.
11. In addition, Mrs Brady confirmed that her understanding was that the Applicant didn't intend to move back in to the Property and may sell it, and that contact between the Applicant's wife and the Respondent had tended to be by text message / phonecall.

FINDINGS IN FACT

12. The Property was registered in the Land Register of Scotland under title number GLA198735 and the registered proprietors were stated to be the Applicant and Dawn Christine Conn.
13. The Applicant and Dawn Christine Conn were registered as landlords of the Property on the Scottish Landlord Register.
14. Section 32(1) of the 1988 Act is in the following terms:
- “A short assured tenancy is an assured tenancy—
(a) which is for a term of not less than six months; and
(b) in respect of which a notice is served as mentioned in subsection (2) below.”
15. The Tenancy Agreement provided for a term of 6 months commencing on 26 January 2008 and the Tribunal was satisfied, on the balance of probabilities, that the Form AT5 met the requirements of section 32(2) of the 1988 Act.
16. Accordingly, the Tribunal was satisfied, on the balance of probabilities that the tenancy was a short assured tenancy and so section 33 of the 1988 Act could apply (if the requirements of it were satisfied).
17. Section 33(1) of the 1988 Act applicable in relation this application is in the following terms:
- “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;

- (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 found, on the balance of probabilities, that:

- a. The tenancy was a short assured tenancy and that it had reached its finish;
- b. The service of the Notice to Quit with an effective date at a possible finish date resulted in tacit relocation not operating;
- c. The Section 33 Notice gave the tenant notice that the landlord required possession of the Property.

19. The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 did not apply in relation to the application under section 33 of the 1988 Act.

REASONS FOR DECISION

20. As noted above, the Tribunal had found, on the balance of probabilities, that the requirements of section 33(1)(a), (b) and (d) had been satisfied, leaving only the question as to whether or not it was reasonable to make an order for possession (section 33(1)(c)).

21. The Respondent had not provided written submissions to the Tribunal nor attended the case management discussion and so had not engaged with the process or indicated any objection to the order for possession being granted. As submitted on behalf of the Applicant, this may have been because she was fully aware of the need for an order for possession in order for her application with the housing association to proceed.

22. Based on the Tribunal members’ own knowledge, it was understood that a local authority or housing association would often not be able to assist until a person was being made homeless (and the necessary order to do so had been granted).

23. The Tribunal members were satisfied, on the balance of probabilities, that it was reasonable to grant the order for possession.

DECISION

24. Accordingly, the Tribunal granted the application under section 33 of the 1988 Act for an order for possession.

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.



11 April 2022

Legal Member (chair)

Date