



**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**

Chamber Ref: FTS/HPC/EV/22/1315

Re: Property at 31 Cedar Ave, Clydebank, G81 4NT (“the Property”)

Parties:

Mr John McFaulds, 36 Renfield St, Glasgow, G2 1LU (“the Applicant”)

**Miss Karen McGonagle, Mr Martin Munro, 31 Cedar Ave, Clydebank, G81 4NT
 (“the Respondent”)**

Tribunal Members:

Melanie Barbour (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it should grant an order for eviction under section 33 of the Housing (Scotland) Act 1988.

Background

1. An application was received under rule 66 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession of the property under a short assured tenancy granted by the Applicant to the Respondents.
2. The application contained :-

- A copy of the tenancy agreement,
 - a copy of the AT5,
 - a copy of the Section 33 Notice,
 - a copy of the Notice to Quit,
 - evidence of recorded delivery service, and
 - Section 11 Notice.
3. The Notice of the Hearing had been served on the Respondent by sheriff officers on 23 June 2022. The case had called for a case management discussion on 3 August 2022. The applicant's agent, Ms Gabriel of Clydebank Estate and Letting Agents and the first respondent both appeared. Reference is made to the full terms of that case management discussion note. On that date the members continued the case management discussion to a full hearing to provide the parties with the chance to obtain necessary evidence to satisfy the tribunal on the reasonableness of the eviction order sought.
4. At the hearing on 22 December 2022 the applicant's agent, Ms Gabriel and the second respondent both appeared again. The applicant's agent had submitted two emails dated 9 and 10 August 2022 in support of the question of reasonableness. The respondent confirmed that she had seen these emails. The respondent had not submitted any written information but provided a verbal update on her position.

Case Management Discussion

5. The applicant's agent advised that she was seeking an order for eviction. She confirmed that the matters set out in the emails of 9 and 10 August 2022 remained the same. The applicant was 70 years and lived on the second floor above offices in Renfield Street, he was increasingly finding the stairs to his home difficult. He is infirm and increasingly housebound. This is impacting on her mental health. He is hoping to sell the rented property in order that he can buy something on the flat but may have to reside in the property for a while, when it is on the market. She advised that it only has one flight of stairs and

while not suitable in the long term for the owner, it would be a better option for him than his present accommodation.

6. She advised that the respondent had been a great tenant, and they had tried to find her other accommodation, but they had nothing large enough for her family. She had offered two different properties but acknowledged given the applicant has five children living with her, the houses offered were not large enough for her and her family. She advised that the applicant would not proceed to evict the respondent immediately if the order was granted but would be happy to try and work with her to ensure that she had somewhere to move to with her family when she moved out.
7. The respondent advised that she was on the local council's waiting list for a home. She had been advised that she would not be offered anything until she had been evicted. She is in contact with the Homeless Prevention Officer, and they asked her to let them know what happened at today's hearing. She apologised for the position that she had found herself in, but she had nowhere else to go.

Findings in Fact

8. We found the following facts established:-
9. That there was a tenancy agreement between the Applicant and the Respondent in respect of the Property.
10. The tenancy commenced on 5 May 2016 for an initial period until 6 May 2017.
11. After the initial period of 12 months the tenancy agreement would continue on a yearly basis.
12. The AT5 Form was in the prescribed format and was dated 5 May 2016.

13. The notice to quit and section 33 notices contained the prescribed information, and both were dated 19 October 2021, both sought vacant possession as of 6 May 2022. Both provided more than 6 months' notice that vacant possession was sought. There was evidence of postal service of the notices.
14. There was a section 11 notice addressed to the local authority.

Reasons for Decision

15. Section 33 of the 1988 Act requires the tribunal to grant an order for possession under a short assured tenancy where: the tenancy has reached its end; tacit relocation is not operating; no further contractual tenancy for the time being is in existence; the landlord has given notice to the tenant that they require possession of the house; and where it is reasonable to do so.
16. We were satisfied that a short assured tenancy had been created. We were satisfied with the terms of the section 33 notice and the notice to quit. We were also satisfied that these notices had been served on the Respondent. We also noted that a section 11 notice has been sent to the local authority.
17. Having regard to the question of reasonableness, the respondent did not object to the order being granted but was unable to leave the property as she lived there with her 5 children and had nowhere else to go. She had been working with the local authority to try and secure accommodation for her and her family and the local authority had indicated that they would assist her in securing property once an order for eviction had been granted. There were quite compelling reasons to allow the respondent to remain in the property given her family makeup and also, as the applicant's agent advised that the respondent had been a very good tenant. That said however, given that the applicant is the homeowner, and needs to have the property vacated in order that he can sell it to purchase a more suitable property to live in for himself and his wife; and the Property suits his needs better than his current property, then

we consider that on balance it would be reasonable to grant the order for eviction.

18. We were satisfied that all of the requirements of section 33 had been met and we consider that it would be reasonable to grant an order for eviction under section 33 of the Housing (Scotland) Act 1988.

Decision

19. We grant an order in favour of the Applicant against the Respondent for recovery of possession of the property.

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.

27 December 2022

Legal Member/Chair

Date