



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/21/2207

Re: Property at 102 Queens Crescent, Livingston, EH54 8EG (“the Property”)

Parties:

Mr John Jacobs, 4 St Marys Place, Stockbridge, Edinburgh, EH4 1JH (“the Applicant”)

Miss Stephanie Caldwell, Mr Barry McQuade, 102 Queens Crescent, Livingston, EH54 8EG (“the Respondents”)

Tribunal Members:

Graham Harding (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for possession of the property and the eviction of the Respondents.

Background

1. By application dated 10 September 2021 the Applicant’s representatives Lothian Homes, Bathgate, applied to the Tribunal for an order under Section 33 of the Housing (Scotland) Act 1988 for possession of the property and the removal of the Respondents from the property.
2. The Applicant’s representatives submitted copies of Form AT5, the tenancy agreement, Notice to Quit, proof of delivery, Section 11 Notice and Section 33 Notice in support of the application.
3. By Notice of Acceptance dated 30 November 2021 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

The Case Management Discussion

4. A CMD was held by teleconference on 28 January 2022. The Applicant was represented by Mrs Isla Casey of Lothian Homes. The Respondents attended personally.
5. The Tribunal noted that it was not disputed that the parties had entered into a Short Assured Tenancy that had commenced on 9 May 2016 for six months and had continued thereafter from month to month. The Tribunal noted that the rent was currently £800.00 per calendar month.
6. Mr McQuade advised the Tribunal that he did not dispute that the Notice to Quit dated 8 March 2021 had been properly served on him and Ms Caldwell by recorded delivery post. He confirmed that the validity of the Notices was not an issue.
7. Mrs Casey confirmed that a Section 11 Notice had been sent to West Lothian Council and a copy had been submitted to the Tribunal.
8. Mrs Casey explained that the Applicant was a retired P.E. teacher who had a small portfolio of rental properties. She understood he was in the process of selling the properties as they became vacant. She did not have any further information as to the Applicant's personal circumstances.
9. Mr McQuade explained that he and Ms Caldwell were struggling to meet the monthly rent particularly since the Covid pandemic. He explained that they had looked to find lower priced rented accommodation in the area but had not found anything. He said that the Respondents who had three children aged 9, 5 and 18 months really needed to obtain a council house as that was all they could afford. He said they had approached West Lothian Council but had been told they would have to wait until a property became available. He had not been given any indication of the length of time it might take.
10. Mrs Casey suggested that in the absence of an order making them homeless the Respondents could be on the Council waiting list for years.
11. Mr McQuade in response to a query from the Tribunal explained that the Respondents had a poor credit rating that meant they were unable to buy a property.
12. In response to a further query from the Tribunal Mr McQuade indicated that remaining in the property was not really an option given the level of rent and that the Respondents were not opposing the order being granted as it was hoped that the Local Authority would then provide them with a council house in due course.

Findings in Fact

13. The parties entered into a Short Assured Tenancy that commenced on 9 May 2016 and endured until 9 November 2016 and continued thereafter from month to month until terminated by either party giving not less than two months written notice.
14. The Applicant's representatives sent a Notice to Quit and Section 33 Notice to the Respondents by Recorded Delivery post on 8 March 2021 giving the Respondents until 9 September 2021 to vacate the property.
15. The Applicant's representatives sent a Section 11 Notice to West Lothian Council by email on 25 May 2021.
16. The Applicant wishes to sell the property with vacant possession.
17. The Respondents live in the property with their three children aged 9, 5 and 18 months.
18. The Respondents are struggling to meet the monthly rent payments and have applied to West Lothian Council for housing.
19. West Lothian Council have given no indication as to when they might be offered a house but have an obligation to provide accommodation for them in the event they are made homeless.

Reasons for Decision

20. The Tribunal was satisfied from the written representations and the oral submissions that the procedural requirements for the granting of an order under Section 33 of the 1988 Act had been met subject only to it being satisfied in terms of the Coronavirus (Scotland) Act 2020 that it would be reasonable to grant the order sought.
21. The Tribunal's initial view was that it would have been appropriate to continue the application to a hearing in order to obtain further information from the Applicant with regards to the reasons for his wish to sell the property. However, given that the Respondents were not opposing the application being granted principally because they were struggling financially to meet the monthly rent and felt they needed to be rehoused by the Local Authority so that they could pay a rent they could afford the Tribunal determined that the order should be granted. The Tribunal was concerned that the usual period of 30 days may not be sufficient time for the local Authority Homeless Unit to find suitable accommodation for the Respondents and their children and therefore extended the period for implementation of the order until 16 March 2022.

Decision

22. The Tribunal having carefully considered the written and oral submissions finds the Applicant entitled to an order for the possession of the property and the removal of the Respondents from the property in terms of Section 33 of the housing (Scotland) Act 1988.

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.

G Harding

Graham Harding
Legal Member/Chair

28 January 2022
Date