



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/22/1015

Re: Property at 1/L 22 North Street, Dundee, DD3 7RR (“the Property”)

Parties:

Mrs Victoria Shaw, 58 Bridle Drive, Clapham, Bedford, MK41 6BB (“the Applicant”)

Mr Brian McCormick, 1/L 22 North Street, Dundee, DD3 7RR (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Linda Reid (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 removal of the Respondent from the property.

Background

1. By application dated 1 April the Applicant’s representatives, Direct Lettings, Dundee, applied to the Tribunal for an order for possession of the property in terms of Section 33 of the Housing (Scotland) Act 1988. The Applicant’s representatives submitted a copy of a tenancy agreement, Notice to Quit and Section 33 Notice with Execution of Service and Section 11 Notice with copy email in support of the application.
2. Following further correspondence between the Applicant’s representatives and the Tribunal administration and the submission of additional supporting documents, by Notice of Acceptance dated 9 August 2022 a legal member of the Tribunal accepted the application and a Case Management Discussion (“CMD”) was assigned.

The Case Management Discussion

3. A CMD was held by teleconference on 19 October 2022. The Applicant did not attend but was represented by Mrs Laura Weir of the Applicant's representatives. The Respondent attended in person.
4. The Respondent indicated that he accepted that the Applicant was entitled to the order sought but that he had been told that he would not be rehoused by the local authority without an order being granted. The Tribunal explained that even although he did not oppose the application it still had to be satisfied that the application was both valid and that it was reasonable to grant the order sought.
5. The Respondent confirmed that he had agreed to a variation of the original short assured tenancy which had run from year to year to one which provided that either party could terminate the tenancy after the ish on giving two months' notice. He explained that he had wished to have some flexibility to be able to move to another property.
6. The Tribunal established that although there was some confusion over the address of the property it was in fact the eastmost first floor flat at 22 North Street Dundee. The Respondent explained that the confusion in the numbering had caused issues with utility providers in the past.
7. For the Applicant Mrs Weir acknowledged that the date of leaving on the Notice to Quit and Section 33 Notice may have been one day out but explained that had been the practice at the time the Notices were served.
8. Mrs Weir confirmed the latest tenancy agreement provided that the tenancy would commence on the 28 February 2013 and end on 27 February 2014 and from month to month thereafter until ended by either party giving two months' notice. The Notice to Quit and Section 33 Notice had specified the leaving date to be 28 October 2021. Mrs Weir explained the delay in submitting the application had been due to the Applicant's husband's poor health and subsequent death as well as Covid and issues around obtaining Probate. She explained that the Applicant and her late husband had a good relationship with the Respondent and had not wished to push matters but ultimately did have to move forward.
9. The Respondent explained that he did not keep good health. He suffered from prolapsed discs and had also been involved in a serious motor bike accident in 2009 that had left him with multiple fractures. He explained that living on the first floor he was effectively housebound for many years. He said he had only been able to remain so long in the property due to assistance from his upstairs neighbour. He explained that he really needed to be housed in ground floor accommodation as he could only manage three steps. He advised the Tribunal he was not working and single with all his family living in Northern Ireland.

10. For the Applicant, Mrs Weir explained that following the illness and subsequent death of the Applicant's husband there was a need for the Applicant to sell the property in order to release capital to provide for her two young children and provide them with a better life. She submitted it was reasonable to grant the order.

Findings in Fact

11. The Respondent entered into a Short Assured Tenancy of the property at a rent of £300.00 per month.
12. Following the end of the tenancy on 27 February 2014 it continued by agreement from month to month until either party gave two months' notice.
13. The Respondent was served with a Notice to Quit and Section 33 Notice on 28 April 2021.
14. Dundee City Council was given notice of proceedings by way of a Section 11 Notice on 6 April 2022.
15. The property was owned by the Applicant's husband, Stephen Shaw, who was the landlord of the property until his death.
16. The Applicant is her late husband's executor and beneficiary.
17. The Applicant intends to sell the property to provide for her children following the death of her husband.
18. The Respondent is single, unemployed and disabled. His present accommodation is not suitable for his needs as he requires a ground floor property.

Reasons for Decision

19. The Tribunal was satisfied from the written representations, documents and the oral submissions that the parties had entered into a short assured tenancy that provided for either party bringing the tenancy to an end on giving two months' notice following the ish. Although the date of termination in the notices to Quit and Section 33 Notice may have been the day after an ish date the Tribunal did not consider that this invalidated the notices as the Respondent would have been entitled to remain in the property until midnight on the 27 October 2021.
20. The Tribunal was satisfied that proper notice of the proceedings had been sent to Dundee City council by virtue of the Section 11 notice emailed on 6 April 2022 by the Applicant's representatives.
21. The Tribunal was therefore satisfied that procedurally the grounds for recovery of possession had been met and it was also satisfied from the documents produced that the Applicant had title to make the application. Were it not for the

terms of the Coronavirus (Scotland) Act 2020 and the Coronavirus Recovery and Reform (Scotland) Act 2022 the Tribunal would have been obliged to grant the order. However, in terms of the foregoing legislation the Tribunal also had to consider if it would be reasonable to grant the order. In reaching its decision the Tribunal carefully considered the circumstances of both parties and taking account of the needs of the Applicant and her children following the death of the Applicant's husband together with the needs of the Respondent given his disability and need for more suitable accommodation determined that it would be reasonable to grant the order sought.

Decision

22. Having carefully considered the written representations, documents and oral submissions and being satisfied it had sufficient information before it to make a decision without the need for a hearing, the Tribunal finds the Applicant entitled to an order for the possession of the property and the removal of the Respondent from 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.

G. Harding

Legal Member/Chair

19 October 2022
Date