

**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/22/3521

Re: Property at 45 Carrick Knowe Drive, Edinburgh, EH12 7EB (“the Property”)

Parties:

**Mr David Hourigan, Ms Melanie Ward, 2F2 7 Victor Park Terrace, Edinburgh,
EH12 8BA (“the Applicant”)**

**Ms Louise Young, 45 Carrick Knowe Drive, Edinburgh, EH12 7EB (“the
Respondent”)**

Tribunal Members:

Jan Todd (Legal Member) and Jane Heppenstall (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 in favour
of the Applicants.**

1. This was a case management discussion to consider the application made by the Applicants dated 28th September 2022 for an order for repossession of the Property in terms of Rule 66 of the Tribunal Rules. The CMD took place by teleconference.
2. The Second Named Applicant is the Landlord in a Short Assured Tenancy with the Respondent who is the tenant. The Applicants have title and interest to raise this action by virtue of owning the property.
3. The Applicant’s solicitor Ms Kirstie Donnelly attended on the teleconference. The Respondent did not attend on the call and was not represented. She was served a copy of the application and the accompanying papers by sheriff officer on 2nd December 2022 and so the Tribunal was satisfied the Respondent had due intimation of the CMD and that it would be appropriate to proceed in her absence.

4. The Applicant had lodged and the Tribunal had sight and considered the following documents:-
 - a. Application for repossession dated 28th September 2022
 - b. Copy Tenancy Agreement for the Property dated 4th August 2015
 - c. Copy AT5 Notice dated 4th August 2015
 - d. Notice to Quit dated 26th November 2021 giving notice to leave by 9th June 2022
 - e. S33 Notice dated 26th November 2021 giving notice to remove by 9th June 2022
 - f. Certificate of Citation from Sheriff Officers certifying they had intimated the notice to quit and s33 notice to the tenant by serving on the tenant personally on 29th November 2021
 - g. S11 notice to Edinburgh City Council
5. The Tribunal sent a direction to the Applicant and Respondent inviting their views on whether it may be reasonable or not for the eviction to be granted.
6. Written representations were received from the Applicant confirming that they intend to relocate to New Zealand with their family and in order to do so they require to sell this property and the one they are currently living in. Their solicitor submitted evidence to support this intention in the form of e-mails from their emigration solicitor and details of the immigration process as well as a sales valuation dated 27th July 2022 from a letting agent. The Applicants also advised that they had considered carrying on as Landlords but their mortgage provider advised that they would not be able to continue with their mortgage due to regulatory changes following Brexit and the Applicants would also incur higher upkeep costs from not being local. In addition the Applicants averred the rent was now in arrears and that overall it would be reasonable for the eviction to be granted.
7. There were no written representations from the Respondent.

The Discussion

8. The Legal Member explained the purpose and order of the proceedings today and invited the Applicant to explain what they were seeking and why. The Tribunal waited approximately until 14.10 to see if the Respondent was going to join the call but she did not join but has lodged written representations as noted above.
9. The Applicant's solicitor Ms Donnelly explained that she was seeking an order for possession today. She advised that the appropriate notices were served on the Respondent in November 2021 giving the required 6 months' notice at that time and confirmed that her clients wished to emigrate to New Zealand were actively taking advice from an emigration lawyer in New Zealand and wished to sell this Property and their own home in order to move. She confirmed that in addition their mortgage on this Property was increasing and it was not financially viable to continue with letting out the Property while relocating.
When asked about the rent arrears and how the rent had increased as appeared to have happened from the rent statement, Ms Donnelly advised that the Applicants had sought to increase the rent in terms of their contract of lease, notwithstanding the current ban on rent increases, however she

advised that having looked into it Ms Donnelly had given her client advice to the effect this increase was not valid as the contractually tenancy had come to an end when they served the Notice to Quit and therefore due to the current rent ban brought in by the Cost of Living Scotland Act Ms Donnelly accepted the arrears would not be at the level shown on the rent statement. Ms Donnelly was unable to confirm if any further rent had been paid as the last entry on the rent statement is rent being debited on 5th January. She conceded a further payment from Universal Credit may have been made but she had no instructions to that effect and therefore could not clarify but advised the main reason for seeking the eviction order is to allow them to sell the Property and move abroad.

Findings in Fact

10. The Applicant and Respondent entered into a short assured tenancy of the Property for a period of 6 months from 14th September 2015 to 13th March 2016.
11. The Applicant is the Landlord and served a Form AT5 on the Respondent who is the Tenant prior to the creation of the tenancy.
12. The Tenancy is a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988.
13. The Applicant has served a Notice to quit dated 26th November 2021 terminating the contractual tenancy on 9th June 2022
14. A S33 notice was served on the Respondent giving 6 months' notice that they required possession of the Property by 9th June 2022.
15. The Applicants wish to move to New Zealand, they would not be able to retain their mortgage for this Property and carry on as a landlord and so wish to sell this Property.
16. A s11 notice in terms of the Homelessness etc. (Scotland) Act 2003 was served on the Local Authority.
17. The Tribunal finds it reasonable that an order for eviction be granted.

Reasons for Decision

18. The Applicant entered into a Short Assured Tenancy with the Respondent on 4th August 2015 the original term of the tenancy was 6 months and an AT5 form was served prior to that date. The Applicant has served a notice to quit terminating the tenancy on an ish or termination date namely 9th June 2022. They have also given notice of her intention to require possession in terms of S33 of the Act.
19. S33 of the Act says "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 for Scotland may make an order for possession of the house if it is satisfied-
 - a) That the short assured tenancy has reached it's ish
 - b) That tacit relocation is not operating
 - c) That no further contractual tenancy is for the time being in existence and
 - 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.

The period of notice required to be given under S33 (1) (d) above is six months, in accordance with the legislation in force at November 2021. 6 months' notice has been given.

20. The Short Assured tenancy has reached its end, tacit relocation is not operating and there is no further contractual tenancy in existence, so the Applicant having given adequate notice in terms of S33 above, can and has applied to repossess the Property. However since April 2020 and Section 2 and Schedule 1 of the Coronavirus (Scotland) Act 2020, there has been a change to the law on repossessions and before an order for possession is granted the Tribunal has to be satisfied that it is reasonable to grant the order.
21. The Tribunal is able to make any order at a case management discussion as it can after a Hearing. The Tribunal considered carefully the submissions from the Applicant and the written evidence it had before it.
22. The Tribunal is satisfied the appropriate notices have been served bringing the contractual tenancy to an end and giving notice under S33 as well as notice to the local authority.
23. The Applicant has served the relevant notices over a year ago and the Respondent has indicated that she has been seeking alternative accommodation. The Applicants wish to emigrate to New Zealand, their mortgage rate is increasing and they have been notified their mortgage provider would not be able to continue as a mortgage provider if they lived abroad. The Applicants have shown their intention to sell their property and to emigrate to New Zealand. It is unclear whether there are current rent arrears or not now that the rent increase is confirmed as not being valid. The Respondent has made no representations or attended this tribunal. The Tribunal balancing the interests of both parties, accepts that the Applicants genuinely wish to move abroad and that they wish to sell this Property in order to do so. The Tribunal finds, in the absence of any response from the Respondent, that it is reasonable to grant an order for repossession at this CMD and that a hearing is not required.

- **Decision**

An order for repossession was granted.

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.

J. Todd

Legal Member/Chair

__31st

Date

January

2022