



**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/22/3989

Re: Property at 46 Kittlegairy View, Peebles, EH45 9LZ (“the Property”)

Parties:

**Dr Gillian McGovern, Dr Carole Helfter, 24 Kittlegairy View, Peebles, Scottish
Borders, EH45 9LZ (“the Applicant”)**

**Miss Linda Dimelow, 46 Kittlegairy View, Peebles, EH45 9LZ (“the
Respondent”)**

Tribunal Members:

Melanie Barbour (Legal Member) and Eileen Shand (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 Respondent.
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 service, and
 - Section 11 Notice.
3. The Notice of the Hearing had been served on the Respondent by sheriff officers. The case called for a case management discussion on 20 February 2023. The applicants both attended. The respondent attended.

Case Management Discussion

4. The applicant confirmed that they were seeking an order for eviction today. The applicant addressed the tribunal on why it would be reasonable to grant the order. They advised that they had approached the respondent about terminating the tenancy, however the respondent would not discuss matters with them for the last couple of months and these proceedings were therefore necessary.
5. They advised that the applicants had been in a relationship but had separated in August 2022. They have two children. The family home is situated very close to the rented property. They planned for the second applicant to move into the rented property in order that she could live close to the couple's children. They had tried to remain living together in the family home, until the respondent had left the property, however this had been very stressful and emotional for both of them. The second applicant had therefore had to move out, and she was currently renting a property in Edinburgh. This was having additional financial impacts on the applicants, in addition to the second applicant being separated from their children. They felt with the current additional changes to the ability to increase rent or remove tenants, there had been a perfect storm working against them.

6. In addition to the respondent not allowing them to contact her direct, she had failed to pay the rent in December 2022, she had however paid January's rent. This had been another element of stress for them and they were concerned that the changes brought in by the temporary legislation would mean that their insurance would not pay out in the event that further rental payments were not made.
7. They advised that the rented property is a three bedroom property and only slightly smaller than their current family home.
8. The applicants suggested that the respondent had not found anything suitable, because the rent they charged was low (£600) and the property was very good value. They suggested that trying to be fair landlords had worked against them.
9. The respondent advised that she was not opposing the order for eviction. She advised that she had not left the property yet, as she had nowhere to go. She has a 7 year old daughter, and she did not want to leave with nowhere to live over the Christmas period. She advised that she had had an opportunity to read the papers, she advised that she had been packing up her belongings with a view to moving out, and the papers were packed away.
10. The respondent advised that she has been emptying the attic, and selling off things in order to get ready to move and reduce removal costs. She advised that she has been unable to find anywhere to date, however she is looking to take up new employment elsewhere and this will give her a chance to widen her search for alternative accommodation. She has been looking for other accommodation, and she has been to various properties but she had not yet found anything suitable. She has registered with various letting agencies in her search.

Findings in Fact

11. We found the following facts established:-

12. That there was in place a short assured tenancy.
13. That there was a tenancy agreement between the Applicant and the Respondent in respect of the Property.
14. The tenancy commenced on 20 February 2016 for an initial period until 20 August 2016.
15. After the initial period of 6 months the tenancy agreement would continue on a monthly basis.
16. The AT5 Form was in the prescribed format and appeared to be served by before the commencement of the tenancy agreement.
17. The notice to quit and section 33 notices contained the prescribed information, and both were dated 12 August 2022, both sought vacant possession by 21 October 2022. Both provided more than 2 months' notice that vacant possession was sought. There was evidence of service of the notices.
18. There was a section 11 notice addressed to the local authority.

Reasons for Decision

19. 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.
20. We were satisfied that a short assured tenancy had been created. We were prepared to accept the terms of the section 33 notice and the notice to quit. We were 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.

21. Having regard to the question of reasonableness, although the respondent did not object to the order being granted, the tribunal did go on to hear from both parties, on this issue. We place considerable weight on the fact that the landlords have separated but have two children; the second landlord is having to rent a property in Edinburgh. The family home is situated very close to the rental property in these proceedings and the second landlord intends to move there once the property has been vacated by the respondent, in order that she can live close to her children. We consider that this in itself would be a sufficiently weighty factor to suggest that it would be reasonable to grant the order of eviction. We would note however, that while the landlords were unhappy and perhaps a degree frustrated with the respondent as she had not yet vacated the property, we consider that in many respects she had acted in a similar manner to the landlords, by putting the interests of her child at the forefront of her decision making. We note she did not want to move out until, she had somewhere for her and her daughter to go to. We consider that she is entitled to make such a decision certainly until the landlords have a legal order to enforce against her. We did not consider her actions to be in any way unreasonable. We note that she is actively hunting for other properties, and she gave a fairly detailed description of what she had been doing to get ready to move and find somewhere else to go to. Given the position of both parties we consider that it would be reasonable to grant the order for eviction.

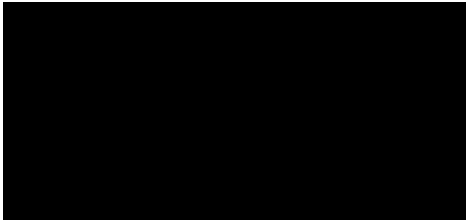
22. We were satisfied that the requirements of section 33 had been met and we consider that it would be reasonable to grant an order for eviction under section 33 of the Housing (Scotland) Act 1988.

Decision

23. 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.



20 February 2023

Legal Member/Chair

Date