



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/22/3330

Re: Property at 34 Fenwick Drive, Barrhead, East Renfrewshire, G78 2LB (“the Property”)

Parties:

Mr Scott Macrae Urquhart, 5 Roxburgh Road, Hulford, KA1 5BW (“the Applicant”)

Mr Scott Harkness, Mrs Dawn Harkness, 34 Fenwick Drive, Barrhead, East Renfrewshire, G78 2LB (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a possession order be made in relation to the property in terms of Section 33 of the Housing (Scotland) Act 1988 and that it is reasonable to grant the order.

Background

1.This application for a possession order in terms of Rule 66 of the Tribunal rules of procedure was first lodged with the Tribunal on 12th September 2022 and accepted by the Tribunal on 16th November 2022.A case management discussion was fixed for 17th February 2023 at 2pm.

Case Management Discussion

2.The case management discussion was attended by Mrs Petrescu Solicitor of Barnett's Solicitors on behalf of the Applicant.Both of the Respondents were in attendance and Mr Harkness spoke on their behalf.

3.The Tribunal had sight of the Application, a paper apart, a short assured tenancy agreement, a Form AT5, a Notice to Quit, a letter and Notice in terms of Section 33 of the Housing (Scotland) Act 1988,an execution of service of the Notice in terms of Section 33 of the 1988 Act and the Notice to Quit by Sheriff Officers, a Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 and a letter sending this to East Renfrewshire Council together with emails sent by the Applicant's representative to the First Tier Tribunal.

4.The parties had entered into a short-assured tenancy at the property with effect from 6th September 2012 until 6th March 2013, but the agreement continued on a bimonthly basis after that period until ether party gave two months' notice to the other of termination of the agreement. A Notice to Quit and a notice in terms of Section 33 of the Housing (Scotland Act 1988 were served on the Respondents on 4th May 2022 giving notice that the Applicant was seeking possession of the property and requiring them to leave the property by 6th July 2022.

5.Mrs Petrescu advised the Tribunal that the Applicant wanted to sell the property as his monthly payments have increased and he had given instructions to seek vacant possession of the property and as a result of that Notice to Quit and a Notice in terms of section 33 of the 1988 Act had been served on the Respondents. There had been discussions with the Respondents, and it was the Applicant's understanding that the Respondents were at the top of a waiting list for alternative housing.

6.The Respondent Mr Harkness advised the Tribunal that the Respondents understood the landlord's position regarding having to sell the property.The Respondents had taken advice when the notices were served and had been advised to wait until the landlord had gone through the Tribunal process and had been given to understand that if they had left when notices were served they would have made themselves homeless. They had registered with a housing association at the same time as approaching the council and had been offered a three-bedroom property by a housing association which met the needs of the Respondents and their two adult children who stay with them. There were issues at this property regarding outstanding energy bills, but it was expected that these would be sorted out and the Respondents could move into the property quite soon.

7.Mr Harkness confirmed to the Tribunal that the Respondents did not object to a possession order being granted for the property and they did not wish to suggest that the granting of an order would not be reasonable in the circumstances.

8.The Tribunal considered all of the notices served and lodged along with the Notice in terms of section 11 of the 2003 Act and all of the papers and representations made. The Tribunal was satisfied that it had sufficient information upon which to make a decision and the proceedings had been fair.

Findings in Fact

9.The parties entered into a short-assured tenancy at the property between 6th September 2012 until 6th March 2013 and this continued on a bimonthly basis until terminated by either party on 2 months' notice.

10.A Notice to Quit and a Notice in terms of section 33 of the Housing (Scotland) Act 1988 dated 2nd May 2022 were served on the Respondents by the Applicant on 4th May 2022 giving them notice that the landlord required possession of the property and requiring them to quit the property by 6th July 2022.

11.The short-assured tenancy has reached its end.

12.The contractual tenancy came to an end on 6th July 2022.

13.Tacit relocation is not operating in relation to the tenancy.

14.The Applicant has given notice to the Respondents that possession of the property is required.

15.The Applicant has sent a Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 to East Renfrewshire Council in relation to this application.

15.The Applicant wishes to sell the property.

16.The Respondents do not object to the granting of a possession order and have secured other suitable accommodation from a Housing Association.

17.It is reasonable in all of the circumstances to grant a possession order for the property.

Reasons for Decision

18.The Tribunal was satisfied that the requirements of section 33 of the Housing (Scotland) Act 1988 had been met in terms of notice to the Respondents in this application and that the tenancy had come to an end and that tacit relocation was not in operation. The Applicants had given proper notice to the Respondents that they require possession of the property. The Applicants wish to sell the property. The Respondents do not object to an order being granted and have secured other suitable accommodation. In all of the circumstances the Tribunal considered that it was reasonable to grant a possession order.

Decision

The Tribunal determined that a possession order be made in relation to the property in terms of Section 33 of the Housing (Scotland) Act 1988 and that it is reasonable to grant the order.

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.

Valerie Bremner

Legal Member/Chair

17.2.23
Date