



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/21/1365

Re: Property at 6 Bramerton Court, 27 Dirleton Avenue, North Berwick, EH39 4BE (“the Property”)

Parties:

Mr Grant Wisnewski, Mrs Beverley Wisnewski, Taranaki, Taranaki, New Zealand (“the Applicant”)

Ms Joanne Copland, 6 Bramerton Court, 27 Dirleton Avenue, North Berwick, EH39 4BE (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for repossession should be granted.

- **Background**

1. This was the second case management discussion (CMD) to consider the application made by the Applicant dated 4th June 2021 for an order for repossession of the Property in terms of Rule 66 of the Tribunal Rules. The CMD took place by teleconference as a result of the current requirement for social distancing.
2. The Applicant is the Landlord in a Short Assured Tenancy with the Respondent who is the tenant. The Applicant has title and interest by virtue of being a joint owner of the property along with her husband who has consented to this application being raised.
3. The Applicant had lodged and the Tribunal had sight and considered the following documents:-
 - a. Application for repossession dated 3rd June 2021
 - b. Copy Tenancy Agreement for the Property dated 13th March 2015

- c. Copy AT5 Notice dated 13th March 2015
 - d. Notice to Quit dated 19th October 2020 giving notice to leave by 13th May 2021 signed by the Respondent on 1st November 2020
 - e. S33 Notice dated 19th October 2020 giving notice to remove by 13th May 2021
 - f. S11 notice to East Lothian Council
4. The Tribunal asked for written representations and case law prior to the first Case Management Discussion regarding the validity of the Notice to Quit in light of the date mentioned in the Notice to Quit.
 5. The Applicant's solicitor Mr MacLeod of Garden Stirling Burnet Solicitors responded on 20th September with written representations on the matter of the validity of the Notice to Quit and the matter of the validity of the notice to quit was discussed at the first CMD where Mr MacLeod expanded on his written submissions and advised that the lease did specify that the fact the lease refers to an end date of 13th September 2015 but goes on to say that "if the agreement is not brought to an end by either party on the end date it will continue thereafter until terminated by either party giving the other at least two months' notice in writing" meant that tacit relocation is rebutted because there was clear indication the lease was to continue after the end date and in the absence of clear terms saying it was on monthly basis he submitted it was implied it would be on a month to month basis. He also drew attention to the fact either party could give two months' notice and it would bring the lease to an end. Mr MacLeod also advised his clients were entitled to get their property back after letting it out for several years and indicated he believed his clients wished to sell the property but could not give further details.
 6. The Respondent indicated that that she was not opposing the notices nor did she wish to seek legal advice. However her position was that she had been in contact with the council who advised she would not be rehoused until there was an order for eviction against her and that she had tried but been unable to find suitable alternative housing to date. She advised that she has a 13 year old son who lives with her and who attends the local high school and that she cares for her mother.
 7. The Tribunal accepted that notice to quit had been given on an ish date, namely 13th May, that therefore tacit relocation is not operating, that no further contractual tenancy is in existence and that 6 months' notice had been given in terms of s33 itself. However the Tribunal agreed it did not feel it had enough information to make a decision about whether it would be reasonable to grant the Applicant an order for possession and continued the case to another CMD for further representations to be made regarding whether or not it would be reasonable for the order to be granted.
 8. Prior to the second CMD the Applicant and Respondent submitted further representations. Mr MacLeod submitted an affidavit signed and sworn by Mrs Beverley Wisnewski on 3rd November advising that her intention along with her husband was to sell the property which was based on a change in personal circumstances related to a reduction in income as a consequence of the Covid -19 pandemic. She confirmed that they needed to sell the Property to reduce the level of mortgage the Family Trust holds in New Zealand and advised that they had tried to explored selling the Property with a sitting tenant but an investor had told them he was not interested due to the tenant currently paying what he considered a below market rent. The Affidavit goes

- on to record that Mrs Wisnewski has had to return to Scotland to care for her father who has become critically ill thus extending their financial pressures.
9. The Respondent in her written statement records that she is a full time carer for her Mother and had found her a sheltered accommodation in North Berwick, that she is herself on lower income due to her caring responsibilities and has not been able to secure any private rented properties as a result. She advises this process has caused her stress, made her ill and that she is reliant on East Lothian Council finding her somewhere for her and her son to live as she needs to be assessed as homeless for them to help. She stresses that living in North Berwick is a priority for her and her son as he is at North Berwick High School and because she is caring for her Mum.

The Case Management Discussion at 10am on 2nd December 2021

10. The CMD proceeded today at 10am by teleconference due to the continuing need for social distancing. The Applicant was not present on the teleconference herself but was represented by Mr Calum MacLeod from Garden Stirling and Burnet Solicitors. The Respondent attended on the call but was not represented.
11. The Applicant's representative explained that he was seeking an order for possession based on the fact the lease is a short assured tenancy and that, the appropriate notices have been served on the Respondent last year, giving her more than 6 months' notice. He confirmed that there was no fault on the part of the tenant and that prior to onset of the Pandemic an application under S33 would be a no fault ground. He submitted that given the changes to the Applicant's circumstances as set out in the Applicant's affidavit, namely a downturn in income and additional strain on their business caused by Mrs Wisnewski needing to be in Scotland to take care of her father it would be reasonable for an order to be granted. He confirmed that his clients had tried to sell the property with the lease in place but this has not proved possible and that they now have no choice but to sell on the open market with vacant possession. He explained that they run a farming business in New Zealand and there had been a downturn in business partly due he submitted to importing and exporting issues. He advised that Mrs Wisnewski is a crucial member of the team and her absence is impacting on the family's income as well.
12. The Respondent referred to her statement and advised in response to questions from the Ordinary member that she has actively applied to housing associations and the council but the latter cannot do anything until she has the outcome of this CMD and there are, she advised, very few private houses for rent in her price bracket. She confirmed that she is reliant on benefits as her Mum's carer and could probably afford a rent of around £825 whereas most of the properties she has seen for rent have been over £1000. She confirmed she is a single parent and would like to stay locally but accepted that she may have to live out with her current area. With regard to the possible new build social housing she advised she has applied for this but there is no definite date for it being ready.

Finding in Facts

13. The Applicant and Respondent entered into a short assured tenancy of the Property for a period of 6 months from 13th March 2015 to 13th September 2015 and then thereafter until terminated by either party giving notice.
14. The Applicant is the Landlord and served a Form AT5 on the Respondent who is the Tenant prior to the creation of the tenancy.
15. The Tenancy is a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988.
16. The Applicant has served a Notice to quit and S33 notice on the Respondent terminating the contractual tenancy and giving 6 months' notice that they required possession of the Property by 13th May 2021 being a termination date of the tenancy.
17. The Respondent acknowledges receipt of the notices.
18. The Respondent who is the tenant has not vacated the property as she has not found another affordable property in the area.
19. The Respondent is in regular contact with the East Lothian Council regarding being rehoused.
20. A s11 notice in terms of the Homelessness etc. (Scotland) Act 2003 was served on the Local Authority
21. The Tribunal finds it reasonable that an order for eviction be granted.

Reasons for Decision

22. The Applicant has entered into a Short Assured Tenancy with the Respondent.
23. 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 its end
 - 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 as amended.

24. The Short Assured tenancy has reached its end, tacit relocation is not operating and there is no further contractual tenancy in existence, for the reasons set out above 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.
25. The Tribunal considered carefully the submissions from the Applicant's representative and Respondent and the written evidence it had before it. The Tribunal notes the Applicant wishes to sell their property and that a further 5

months has elapsed since this application has been raised and the Applicant has financial issues that are now exacerbated by Mrs Wisnewski now being in Scotland to care for her father. The Respondent has confirmed she has received notice of the landlord's intention to recover the Property and notice for her to remove from the property. She has been in contact with the council regarding being rehoused but has not yet been offered a Property and has been advised she needs an order for eviction to show that she is homeless and a priority. She has sought unsuccessfully to find other accommodation and has applied for social housing that is currently being built.

26. The Tribunal is able to make any order at a case management discussion as it can after a Hearing. Given it has now been over a year since the S33 notice was served, given the Applicant wishes to sell the property, that the Applicant wishes to do so because their income has reduced due to the pandemic and is under further strain with Mrs Wisnewski attending Scotland to look after her father and given the council does have a duty to rehouse or give advice on this to the Respondent then the Tribunal, balancing the interests of both parties, finds it is reasonable to grant an order for repossession at this CMD and that a hearing is not required.
27. The Tribunal also considered that based on the fact the festive holidays are approaching and that this means offices would be closed for some days over the festive period that it would be reasonable and proportionate to delay execution of the order by approximately 18 days until 21st January 2021 in terms of rule 16A (d) of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017. This will allow the Respondent further time to vacate the Property and for the Council to assist her to obtain alternative accommodation.

- **Decision**

An order for eviction 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.

2nd December 2021

Legal Member/Chair

Date

