Housing and Property Chamber
First-tier Tribunal for Scotland

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/22/2715

Re: Property at Flat 2/3, 2 Macdougall Street, Glasgow, G43 1RZ ("the Property")

Parties:

Ms Shirley Crawford, 20 William Grange, Thorntonhall, G74 5DF ("the Applicant")

Ms Jamila Aden Chofley, Flat 2/3, 2 Macdougal Street, Glasgow, G43 1RZ ("the Respondent")

Tribunal Members:

Petra Hennig-McFatridge (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that that the order for recovery of possession should be granted.

A Background:

[1] The application for an order for Possession on Termination of a Short Assured Tenancy in terms of S 33 of The Housing (Scotland) Act 1988 was made on 5 August 2022.

[2] The following documents were lodged by the Applicant prior to the date of the Case Management Discussion (CMD):

1. Copy Tenancy Agreement commencing 1 April 2016
2. AT5 document for Respondent countersigned 31 March 2016
3. Notices to Quit for Respondent dated 21 January 2022 with date of removal of stated as 1 August 2022.

4. S 33 Notices to the Respondent dated 21 January 2022 with date of vacating premises of 1 August 2022.
5. Email sending S 33 notice and Notice to Quit to Respondent dated 21 January 2022
6. S 11 Notice to the Local Authority and email confirming sending of same on 4 August 2022.
7. Authorisation of agent by Respondent
8. Authorisation of Respondent by joint owner of the property.

The documents are referred to for their terms and held to be incorporated herein.

[3] A Case Management Discussion (CMD) had been fixed for 11 January 2023 and the notification served on the Respondent on 29 November 2022 by Sheriff Officers

B The Case Management Discussion:

[4] The CMD took place on 11 January 2023. The CMD took place by teleconference and Mr Paul Priestman attended on behalf of the Applicant. The Respondent did not take part. The legal member explained the purpose of the Case Management Discussion.

[5] Mr Priestman advised that he had spoken to the Respondent at end of the year and she had clearly been aware of the CMD. He had spoken to her in depth in January 2022 before the notices were sent advising of the situation, explaining that his organisation was happy to assist if there were any properties the Respondent may be interested in from their portfolio and specifically discussing that the notice would be sent by email, which is the way the Letting Agent and the Respondent had been communicating previously. At the end of 2022 the Respondent had advised Mr Priestman that she had been in contact with the local Council seeking social housing options but this had so far not resulted in finding alternative accommodation. Mr Priestman advised that the Respondent lived at the property on her own and had been a good tenant. There had never been any issues and she had looked after the property. There was no conflict between the tenant and the landlord and this is why he had tried to let the Respondent know in advance when and why the notices would be served and that he would be happy to put her in touch also with other agencies regarding alternative properties. The Applicant had initially hoped the tenant would find alternative accommodation and was happy to wait for that to happen but after a year was now at the point where she needed to sell the property as soon as possible. She used to live in the property and owns it together with her sister, who appears to have provided part of the funds for the property. She requires to free up the funds. There is no other portfolio of properties for her to access funds. Mr Priestman asked the Tribunal to grant the order and to find that this would be reasonable in all the circumstances.

C Findings in Fact:

1. The Applicant and the Respondent entered into a Short Assured Tenancy on 1 April 2016 for an initial period of 6 months to 1 October 2016 and continued thereafter from month to month (clause 1.1).
2. Document AT5 was received by the Respondent and signed for by her on 31.3.2016

3. The notice period stated in clause 1.1 for termination of the contractual tenancy by the landlord is 2 months.
4. Notice to Quit dated 21 January 2022.
5. Tacit relocation is not operating due to the Notice to Quit.
6. Notice in terms of S 33 (1) d of The Housing (Scotland) Act 1988 was served on the Respondent with her consent of this method of service by email on 21 January 2022 advising of the intention to repossess the premises on 1 August 2022.
7. Notice to the Local Authority was given in terms of S 11 of the Homelessness Etc (Scotland) Act 2003.
8. The Respondent continues to occupy the property at the date of the CMD on 11 January 2023.
9. The Respondent lives at the property without any dependents.
10. The Applicant seeks to sell the property to raise funds.
11. The Applicant is reasonably entitled to use the process under S 33 to gain repossession of her property in these circumstances.
12. The Respondent had been made aware of the circumstances by the Letting Agent prior to the notices being served and had been provided with some support from the Letting Agent to seek alternative accommodation. She is actively looking for alternative accommodation at present.

D Reasons for the Decision:

[1] The Tribunal considered that the material facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a)in any place where a hearing may be held;

(b)by videoconference; or

(c)by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a)identifying the issues to be resolved;

(b)identifying what facts are agreed between the parties;

(c)raising with parties any issues it requires to be addressed;

(d)discussing what witnesses, documents and other evidence will be required;

(e)discussing whether or not a hearing is required; and

(f)discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a)may make a decision without a hearing if the First-tier Tribunal considers that—

(i)having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
(ii)to do so will not be contrary to the interests of the parties; and
(b)must make a decision without a hearing where the decision relates to—
(i)correcting; or
(ii)reviewing on a point of law,
a decision made by the First-tier Tribunal.
(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The documents lodged are referred to for their terms and held to be incorporated herein.

[2] The Respondent has not made any representations and did not attend the CMD. The Respondent had fair notice of the representations of the Applicant forming the reasons for the application and has not challenged these. As no representations were received from the Respondent by the Tribunal, the facts of the case are not in dispute. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case. The Respondent was made aware that the Tribunal could consider the case on its merits and make a decision at the CMD. No defence was lodged to the application.

[3]. The documents lodged are referred to for their terms and held to be incorporated herein. The Tribunal makes the decision on the basis of the documents lodged on behalf and the representations made by Mr Priestman on behalf of the Applicant. The documents lodged evidenced sufficiently the matters required to determine whether the legal tests for an order in terms of S 33 of the Housing (Scotland) Act 1988 are met.

[4] The legal test for an eviction order is set out in S 33 of the Housing (Scotland) Act 1988 as amended by the Coronavirus (Scotland) Act 2020. The Coronavirus (Scotland) Act 2020 applies to this case as the Notices were served after 7 April 2020 when the Act came into force.

S 33 in the version applicable where the notice to quit and S 33 notices were served between 3 October 2020 and before 30 March 2022 stated:

33 Recovery of possession on termination of a short assured tenancy.

(1)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 may make an order for possession of the house if the Tribunal is satisfied—

(a)that the short assured tenancy has reached its finish;

(b)that tacit relocation is not operating; and

(c) that no further contractual tenancy (whether a short assured tenancy or not) 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.

(2)The period of notice to be given under subsection (1)(d) above shall be—

(i)if the terms of the tenancy provide, in relation to such notice, for a period of more than six months, that period;

(ii)in any other case, six months.

(3)A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4)Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

(5)For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.

[5] In short, in terms of S 33 (1) of the Housing (Scotland) Act 1988 an order for possession of the house under a Short Assured Tenancy shall be made if the Tribunal is satisfied that:

1. The short assured tenancy has reached its ish
2. That tacit relocation is not operating
3. That there is no further contractual tenancy in existence
4. That the landlord has given to the tenant notice that he requires possession of the house.
5. That it is reasonable in all the circumstances to grant the order.

[6] The facts of the case are not in dispute. Fair notice of all aspects of the Applicant's case had been provided to the Respondent. The Respondent did not oppose the granting of the order. The dates and documents served as stated above were not in dispute. The Tribunal was satisfied on the basis of the documents lodged that that all requirements for recovery of possession in terms of the Housing Scotland Act 1988 had been complied with.

[7] The tenancy document and AT5 document show that the tenancy is a Short Assured Tenancy which has reached its ish. The Applicant had served a notice to quit with the required notice period. The end date for the initial period of the Short Assured Tenancy was stated as 1 October 2016 with a monthly continuation thereafter. 1 August 2022 was a valid ish date of the tenancy. Tacit relocation does not operate. The landlord had served on the Respondent a notice in terms of S 33 (1) d of the Housing (Scotland) Act 1988 with the required 6 months notice period. The Notice to Quit ended the contractual tenancy at an ish date and thus the tenancy became a statutory assured tenancy in terms of S 16 of the Housing (Scotland) Act 1988.The service was carried out by email. Although S 54 of the Housing (Scotland)

Act 1988 does not allow service of a S 33 notice under the Act by email, the service was correctly carried out as paragraph 1 of schedule 4 of the Coronavirus (Scotland) Act 2020 explicitly allows service by electronic means with the consent of the Respondent to receive electronic transmission of such documents because a S 33 notice qualifies as "any document that an enactment requires be given to a person in connection with, or in order to initiate, proceedings" in terms of paragraph 1 (4) (c) of schedule 4 of said Act. The service was thus correctly carried out on 21 January 2022.

[8] Even if the formal tests of S 33 (1) of the Housing (Scotland) Act 1988 are met, the Tribunal still has to consider whether it is reasonable in all the circumstances to grant the eviction order. In the case of *City of Glasgow District Council v Erhaiganoma* 1993 SCLR 592, The Inner House of the Court of Session stated at page 594 that "Where prima facie reasonableness has been made out, we think that it is then for the tenant to put circumstances before the court to show otherwise.". In this case the Tribunal notes that the reason given to the Letting Agent by the Respondent for not moving was that she was in the process of finding alternative accommodation. There was no opposition to the application and the Respondent did not put forward any reasons why it would not be reasonable to grant the order. The Applicant has a legitimate purpose in wishing to sell the property. The Applicant's agent had sought to assist the Respondent with pointing them to alternative accommodation suggestions. The Applicant had been cooperative with the Respondent and had been reasonable and patient in her conduct and there was no animosity between the parties. The Respondent did not challenge the reasonableness of an order being granted. The process of re-gaining control of the property for the Applicant has to date taken almost one year.

[9] The Tribunal thus considered that on balance and taking into account all the information available it is reasonable to grant the eviction order. The decision was unanimous.

Decision:
The Tribunal grants the order for recovery of possession.

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.

Petra Hennig McFatridge	**11 January 2023**
Legal Member/Chair	**Date**