



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 (“the 1988 Act”)

Chamber Ref: FTS/HPC/EV/22/4495

Re: Property at 6 Orchard Grove, Haddington, EH41 3LD (“the Property”)

Parties:

Ms Rosemary Luke, The Orchard, Haddington Road, East Linton, East Lothian, EH40 3DW (“the Applicant”)

Mr Malcolm Smith, Ms Linda Smith, 6 Orchard Grove, Haddington, EH41 3LD (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession be made in favour of the Applicant.

1. Background

1.1 This is an application under Rule 66 of the Chamber Rules for an order for recovery of possession of a property let on a short assured tenancy agreement. The application was accompanied by copies of the written tenancy agreement between the parties, a notice to quit and notice in terms of section 33 of the 1988 Act.

1.2 No written representations had been lodged by the Respondents.

2. The Case Management Discussion

2.1 The Case Management Discussion took place on 12 April 2023 by teleconference. The Applicant was represented by Ms Donnelly, solicitor.

The First Respondent was personally present and represented the Second Respondent who was his wife.

- 2.2 Ms Donnelly confirmed that the application was insisted upon. Notice to quit and notice in terms of section 33 of the 1988 Act had been served. The Applicant wished to sell the property. She had inherited the property from her late father and it was her only remaining rental property. Whilst it had initially been her intention to gift her daughter a deposit for purchasing a new home from the proceeds of any sale, it was now her intention to have her granddaughter move into the property with a view to purchasing it from her once a deposit had been saved. The Applicant was 73 years of age. It was understood that the Respondents were engaged with the local authority for rehousing.
- 2.3 The First Respondent confirmed that the application was not opposed. He was, in fact, keen to move out as soon as possible. The property was too large for the Respondents and they wished to downsize. They had approached the local authority for rehousing but nothing had become available as yet. If he required to move out sooner, the Respondents would reside with family until other accommodation became available. The Second Respondent had changed her name since marriage to the First Respondent.
- 2.4 Ms Donnelly requested that the Second Respondent's name be amended given her married status. The First Respondent confirmed that there was no difficulty with that.

3. Reasons For Decision

- 3.1 A valid notice to quit and notice in terms of section 33 of the 1988 Act had been served by the Applicant. The only issue for determination by the Tribunal was whether it was reasonable in terms of section 33(e) of the 1988 Act for an order for recovery of possession to be granted.
- 3.2 Given that the application was not opposed and the Respondents were keen to move to new accommodation, the Tribunal determined that it was so reasonable. It was within the knowledge of the Tribunal that the local authority, being East Lothian Council, would owe duties to the Respondents to ensure that they did not become homeless. As the application was subject to the Cost of Living (Tenant Protection) (Scotland) Act 2022, the order could not be enforced until, at the time of writing, 30 September 2023 at the earliest. This would allow the Respondents adequate time to engage with the local authority and source alternative accommodation.
- 3.3 The Second Respondent's name was amended given that the Respondents were now married and she had taken the name of her husband. This is reflected in this decision and 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.

Alastair Houston

Legal Member/Chair

Date 12 April 2023