



**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/23/0402

Re: Property at 30 Stormyland Way, Barrhead, G78 2RR (“the Property”)

Parties:

**Mr Andrew Crombie, Mrs Lynn Crombie, 39 Millview Meadows, Neilston, G78
3ND; 39 Millview Meadows, Neilston, G78 3ND (“the Applicant”)**

Ms Lynne Brown, 30 Stormyland Way, Barrhead, G78 2RR (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined to make an eviction order**

Background

- 1 By application to the Tribunal the Applicants sought an eviction order against the Respondent in respect of the Property under section 33 of the Housing (Scotland) Act 1988. In support of the application the Applicants provided the following documentation:-
 - (i) Short Assured Tenancy Agreement between the parties dated 7th November 2014 together with Form AT5;
 - (ii) Notice to Quit dated 29th November 2022 together with proof of service by Sheriff Officers;
 - (iii) Notice under section 33 of the Housing (Scotland) Act 1988 dated 29th November 2022 together with proof of service by Sheriff Officers; and

- (iv) Notice under section 11 of the Homelessness (Scotland) Act 2003.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was assigned for the 28th April 2023. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondents by Sheriff Officers.

Case Management Discussion

- 3 The Case Management Discussion took place by teleconference on 28th April 2023. The Applicant, Mr Crombie, was present. The Respondent did not attend. The Tribunal noted she had been served with the application paperwork together with the date and time of the Case Management Discussion and instructions for joining the teleconference. The Tribunal therefore determined to proceed in her absence.
- 4 The Tribunal explained the purpose of the Case Management Discussion and the legal test and asked Mr Crombie to address them on his application.
- 5 Mr Crombie advised that he had served notices on the Respondent which expired on 7 February 2023. He had a very good relationship with his tenant. She was ready to move on and was looking to acquire a Council house. The reason he was looking to take the property back was due to financial difficulties. He had recently retired from his job due to health issues. His mortgage over the property had expired and the lender had given him a period of grace to recover and sell the property. He was not in a position to refinance as he could not get another mortgage. There were other properties in his portfolio in respect of which he would have to do the same. He didn't want to get into a position where the lender had to step in. Selling the property would assist him greatly.
- 6 Mr Crombie confirmed that he had been speaking to the Council in order to see if there was anything he could do to assist the Respondent. The Council was short of properties but they were keeping him up to date. They had advised the Respondent that she didn't have to leave on the 7th February and he would have to obtain an eviction order. Mr Crombie had told her that as well.
- 7 In response to questions from the Tribunal Mr Crombie confirmed that he had seven properties that he let out. He would not be selling them all. There wasn't much equity in this property but should be enough to sell without going into negative equity. The mortgage was interest only and he was under some

pressure to sell. Mr Crombie confirmed that the Respondent lived alone with her children. He believed them to be toddler age. When he last spoke with her she was optimistic about rehousing following discussions with the Council. Mr Crombie confirmed that he understood the application was subject to the cost of living legislation that would prevent enforcement of the order for six months.

Relevant Legislation

- 8 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Housing (Scotland) Act 1988, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

“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 ish;

b) that tacit relocation is not operating; and

(c)

(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.”

The Cost of Living (Tenant Protection) (Scotland) Act 2022 is also relevant to this application, it having been received by the Tribunal after 28 October 2022.

Findings in Fact and Law

- 9 The Applicant entered into a Short Assured Tenancy Agreement with the Respondents the term of which was 7 November 2014 to 7 May 2015.
- 10 The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 11 The tenancy continued by tacit relocation on a monthly basis.
- 12 On 1st December 2022 the Applicant delivered a Notice under section 33 of the Housing (Scotland) Act stating that the Applicant required the property back by 7 February 2023 and a Notice to Quit to the Respondents which sought to terminate the tenancy as at that date. The Notice to Quit was in the prescribed form. The Notices were served by Sheriff Officers.
- 13 The Notice to Quit terminates the tenancy as at 7 February 2023 which is a valid ish date.
- 14 The Applicant intends on selling the property. The Applicant has a mortgage over the property which has expired and he is unable to obtain refinancing.
- 15 The Applicant has been given a grace period by the mortgage lender in order to sell the property.
- 16 The Applicant is retired due to health issues.
- 17 The Respondent is seeking accommodation with the local authority.
- 18 The Respondent resides with children who are toddler age.
- 19 It is reasonable to make the order sought by the Applicant.
- 20 The provisions of section 33 of the Housing (Scotland) Act 1988 have been met.

Reasons for Decision

- 21 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved.

- 22 The Tribunal was satisfied that the Respondent had been served with a valid Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988. The issue for the Tribunal to determine therefore was whether it was reasonable in all the circumstances to grant an eviction order.
- 23 The Tribunal accepted the situation outlined by the Applicant, namely that he required to sell the property for financial reasons due to his inability to remortgage following retirement due to ill health. If he was unable to recover vacant possession of the property it was likely that the mortgage lender would take action to do so. The Tribunal noted that the Applicant had a good relationship with the Respondent and was actively trying to assist her in obtaining Council housing and accepted that she was keen to move. Whilst the Tribunal had some concerns about the Respondent's children, she was receiving support from the local authority and it was highly probable that she and her family would be entitled to accommodation. She had not attended the Case Management Discussion and there was nothing before the Tribunal to contradict the position put forward by the Applicant which the Tribunal found to be credible.
- 24 It should be noted that this was also an application to which the Cost of Living (Tenant Protection) (Scotland) Act 2022 applies. As at the time of writing this prevents any action being taken to enforce the eviction order prior the earlier of (a) the day following the end of a period of 6 months beginning with the day on which this order was granted as specified above, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 which is the 30 September 2023. The Respondent would therefore have a lengthy period of time to move out of the property and into alternative accommodation. On that basis the Tribunal determined it would be reasonable to make the order.
- 25 The decision of the Tribunal was unanimous.

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.

28 April 2023

Legal Member/Chair

Date