



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/EV/23/2382

Re: Property at 18 Thorndean Crescent, Bellshill, ML4 2LN (“the Property”)

Parties:

Ms Christine James, Walnut House, 52 Love Street, Paisley, PA3 2DY (“the Applicant”)

Ms Carly Sharpe, 18 Thorndean Crescent, Bellshill, ML4 2LN (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

BACKGROUND

1. By lease dated 31st May 2017 the Applicant let the Property to the Respondent.
2. Prior to the lease being signed a notice in terms of Section 32 of the Housing (Scotland) Act (“the 1988 Act”)– commonly referred too as a Form AT5 – was signed by the Respondent. The lease, therefore, is a short assured tenancy in terms of the 1988 Act.
3. On 8 February 2023 the Applicant served a notice to quit and a notice in terms of Section 33 of the 1988 Act upon the Respondent.
4. A notice in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority.
5. The Applicant thereafter presented an application to the Tribunal seeking an order for the Respondent to be evicted from the Property.

THE CASE MANAGEMENT DISCUSSION

6. The Applicant did not personally participate in the Case Management Discussion but was represented by Mr John Sparkes of Walnut Property. Mr Sparkes is, in fact, the partner of the Applicant. The Respondent did not participate in the Case Management Discussion. On the morning of the Case Management Discussion she emailed the Tribunal advising that she would not be able to attend, explaining reasons for that, but also adding "I am happy for the Case Management Discussion to go ahead without my attendance as I have no evidence to submit anyway."
7. Mr Sparkes moved the Tribunal to grant an order for eviction. He appreciated the Tribunal required to consider whether it was reasonable to grant such an order.

The Applicant

8. The Applicant wished to obtain vacant possession of the property as she wished to sell it. Mr Sparkes advised that he and the Applicant previously had as many as 50 properties which were being let. These were mainly being operated under the business name of Walnut Properties. This particular property, however, is owned in the name of the Applicant alone.
9. Due to a number of factors, most recently the significant increase in interest rates affecting mortgage repayments, the business is no longer viable. The Tribunal was advised that the business was losing approximately £5,000.00 per month and losses continuing at that level quite simply could not be sustained. In the circumstances the decision was taken previously that most of the properties owned by the business would be sold.
10. The Applicant wished vacant possession of the property for that purpose – i.e to sell it to alleviate financial pressure on her current business.
11. Consideration had been given to selling the Property with a sitting tenant. That, however, was not possible as no suitable offers were received. Mr Sparkes advised the Tribunal that any offer to purchase the Property with a sitting tenant was made at approximately 75% of the actual market value of the Property.

The Respondent

12. The Tribunal made enquiry of Mr Sparkes in relation to the personal circumstances of the Respondent. As far he was aware, the Respondent had various health issues both mental and physical. This information, however, was provided to Mr Sparkes by the Respondent's social worker.
13. The Respondent has two children who reside with her. While their father does not reside at the Property, he is involved in the upbringing of the children. Mr Sparkes believes one of the children is 6 years old and one is younger.
14. It is understood that the Respondent is, in fact, wishing to remove herself from the Property and secure alternative accommodation. The existence of and eviction order may, in fact, assist the Respondent if that is her wish.
15. The Applicant accepts that any eviction order will be subject to the cost of Living (Tenant Protection) (Scotland) Act 2022 and, it would be a number of months before any eviction order granted could be enforced.
16. The Tribunal found the following facts to be established:-

- a) By lease dated 31st May 2017 the Applicant let the Property to the Respondent.
- b) The lease, therefore, is a short assured tenancy in terms of the 1988 Act.
- c) On 8 February 2023 the Applicant served a notice to quit and a notice in terms of Section 33 of the 1988 Act upon the Respondent.
- d) A notice in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority.
- e) The Applicant thereafter presented an application to the Tribunal seeking an order for the Respondent to be evicted from the Property.
- f) The Applicant requires to sell the Property to alleviate financial pressures upon her and her business, which business is currently operating at a loss.
- g) It is reasonable that an order for eviction is granted.

REASONS FOR DECISION

17. The tenancy is a short assured tenancy. The legal requirements to terminate such a tenancy had been complied with in that a notice to quit and a notice in terms of Section 33 of the 1988 had been served upon the Respondent. The tribunal, however, still required to consider issues of reasonableness in granting an order for eviction.
18. The Respondent did not oppose the application. Indeed, she emailed the Tribunal advising she was content for the Case Management Discussion to proceed in her absence and commenting that she had no evidence to submit.
19. The Applicant provide cogent reasons for her need to sell the Property. The Applicant's letting business is not financially viable and a decision to dispose of various properties is, in the circumstances, understandable and reasonable.
20. The Applicant has also considered disposing the property with Respondent as a sitting tenant but that has not been a viable option either. In the circumstances, the desire of the Applicant to gain vacant position to sell the property is reasonable.
21. From the information available to the Tribunal, albeit provided via the Applicant, the Respondent has support from a social worker and from her former partner.
22. The Respondent is seeking alternative accommodation and, even if an eviction order is granted, would still have a number of months within which to secure alternative accommodation.
23. In balancing the interests of the Applicant and the Respondent, the Tribunal concluded that it was, the circumstances, reasonable to grant an eviction order as sought.

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988

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.

10th November 2023

Legal Member/Chair

Date