



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/23/2588

Re: Property at 22 Glen Road, Livingston, EH54 8DQ (“the Property”)

Parties:

Wingman Ventures Ltd, 165 Brook Street, Broughty Ferry, Dundee, DD5 1DJ (“the Applicant”)

Claire Peacock, 22 Glen Road, Livingston, EH54 8DQ (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

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

Background

1. This is an application by the Applicant for an order for possession on termination of a short assured tenancy in terms of rule 66 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The tenancy in question was a Short Assured Tenancy of the Property by Leanne Carling to the Respondent commencing on 14 August 2015. The Applicant is the successor in title to Ms Carling, having registered title to the Property on 30 September 2021 with a date of entry of 20 September 2021.
2. The copy application in our papers did not bear a clear date but it was lodged with the Tribunal on or about 3 August 2023. This makes the application subject to the *Cost of Living (Tenant Protection) (Scotland) Act 2022*, as shall be referred to further below.

3. The application relied upon a Notice to Quit and notice in terms of section 33 of the Housing (Scotland) Act 1988, both dated 1 December 2022, providing the Respondent with notice (respectively) that the Applicant sought to terminate the Short Assured Tenancy and have the Respondent vacate, each by 14 February 2023. Evidence of service of the said notices by Sheriff Officer service on 9 December 2022 was included with the application.
4. Evidence of a section 11 notice dated 2 August 2023 in terms of the Homelessness Etc. (Scotland) Act 2003 served upon West Lothian Council was provided with the application.

The Hearing

5. On 31 October 2023 at 10:00, at a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting remotely by telephone conference call, we were addressed by the Applicant’s solicitor, Jay Lawson, MML Law, and by the Respondent herself. The Respondent was supported by her mother but Mrs Peacock made no submissions herself.
6. We sought clarification from the Respondent as to whether the application was opposed. She explained that it was not. The Respondent disclosed certain medical issues and that she was in receipt of support from a number of health workers and community workers. She explained that she found the process of the eviction application most stressful and it was the view of those providing her with support that it would be better for her to conclude this process and, once in receipt of an eviction order, turn instead to seeking rehousing from the local authority’s homelessness unit. We carefully these discussed matters with the Respondent and satisfied ourselves: that she took no issue with the validity of any of the documents served upon her; that she fully understood the position she found herself in; that she was in agreement with the advice she had received; and that she was satisfied that support would be available to her to seek rehousing (ideally within the period of suspension of any order that is provided by the 2022 Act). She confirmed all of this to us during the CMD. She further confirmed her understanding that she required to produce an order for eviction to the local authority in order to advance her application for rehousing.
7. In regard to the details and merits of the application, the Applicant’s agent confirmed that the Property was previously owned by a director of the Applicant and transferred to the Applicant in a portfolio transfer. By the time of the transfer, the Respondent was already a sitting tenant. The Applicant’s directors now principally resided abroad and sought to sell the entire portfolio. It was the Applicant’s view that a sale would attract a wider market if with vacant possession, and this was the reason for seeking to terminate the Tenancy at this time.
8. In consideration of the Respondent’s consent to the order, the Respondent had no contrary submissions on the grounds for eviction.
9. No order for expenses was sought.

Findings in Fact

10. By written lease dated 14 August 2015, Leanne Carling let the Property to the Respondent by lease with a start date of 14 August 2015 until 14 February 2016 to “continue thereafter on a monthly basis until terminated by either party” (“the Tenancy”).
11. The Tenancy was a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988 further to Ms Carling issuing the Respondent with a notice under section 32 of the 1988 Act (an “AT5”) on 14 August 2015, prior to commencement of the Tenancy.
12. Ms Carling transferred title to the Property to the Applicant with a date of entry of 20 September 2021 and the Applicant became landlord under the said Tenancy.
13. On 1 December 2022, the Applicant’s letting agent drafted a Notice to Quit in correct form addressed to the Respondent, giving the Respondent notice that the Applicant wished her to quit the Property by 14 February 2023.
14. On 1 December 2022, the Applicant’s letting agent drafted a Section 33 Notice under the 1988 Act addressed to the Respondent, giving the Respondent notice that the Applicant required possession of the Property by 14 February 2023.
15. 14 February 2023 is an ish date of the Tenancy.
16. On 9 December 2022, a Sheriff Officer acting for the Applicant competently served each of the notices upon the Respondent. The Respondent was thus provided with sufficient notice of the Applicant’s intention that the Tenancy was to terminate on 14 February 2023.
17. On or around 3 August 2023, the notice period under the notices having expired, the Applicant raised proceedings for an order for possession with the Tribunal, under rule 66, the grounds of which being: that the Tenancy had reached its ish; that tacit relocation was not operating; that no further contractual tenancy was in existence; that notice had been provided that the Applicant required possession of the Property all in terms of section 33 of the 1988 Act; and that it was reasonable to make the order.
18. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon West Lothian Council on or around 2 August 2023 on the Applicant’s behalf.
19. On 27 September 2023, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondent, providing the Respondent with sufficient notice of the CMD of 31 October 2023.

20. The Applicant seeks to sell the Property as part of a realisation of its asset portfolio.
21. The Respondent is in receipt of community and health care support and treatment, and those providing such support have advised her that she would be best served by bringing the Tribunal application process to a conclusion and seek rehousing by the local authority.

Reasons for Decision

22. The application was in terms of rule 66, being an order for possession upon termination of a short assured tenancy. We were satisfied on the basis of the application and supporting papers that the necessary notices had been served with sufficient notice (in terms of the temporary amendment of the 1988 Act), the Respondent was extending no defence or dispute to the notices, and thus the requirements of the 1988 Act had been complied with.
23. We require, in terms of the 1988 Act as currently amended, to consider “that it is reasonable to make an order for possession”. On this, the Respondent offered no opposition and indeed consented to the order as it was the route available to her to obtain local authority assistance with rehousing. We were satisfied that the Applicant’s reasons for seeking eviction were reasonable and, in the unfortunate position that the Respondent found herself in, it was reasonable to evict so as to allow her to proceed to seek rehousing. In the circumstances before us, and particularly considering the Respondent’s position and the suspension that will be applied under the 2022 Act, we were thus satisfied that it was reasonable to grant the application.
24. The Rules allow at rule 17(4) for a decision to be made at a CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time but with the earliest date of eviction suspended in terms of the 2022 Act in the following fashion: not to be executed prior to 12 noon on the earlier of:
 - a. the day following the end of a period of 6 months beginning the date of our order (that is the day after 30 April 2024); or
 - b. the date of the expiry or suspension of Paragraph 1 of Schedule 2 of the *Cost of Living (Tenant Protection) (Scotland) Act 2022* (currently scheduled for 31 March 2024).

Decision

25. In all the circumstances, we make the decision to grant an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988 suspended as stated above in terms of the 2022 Act.

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.



31 October 2023

Legal Member/Chair

Date