



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”) and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/23/2297

Re: Property at 1 Lady Road Place, Newtongrange, EH22 4SU (“the Property”)

Parties:

Mr Christopher Gibson, 51A Easthouses Road, Dalkeith, EH22 4EB (“the Applicant”)

Ms Isobel Waugh, 1 Lady Road Place, Newtongrange, EH22 4SU (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Tony Cain (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for the order for possession should be granted.

Background

1. By application received on 11 July 2023, the Applicant sought an order under Section 33 of the Housing (Scotland) Act 1988 (“the Act”) for possession of the Property on termination of a Short Assured Tenancy. The application was made in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). Supporting documentation was submitted with the application, including a copy of the Tenancy Agreement, AT5, Notice to Quit, Section 33 Notice and Section 11 Notice to the local authority.

2. On 31 August 2023, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance in respect of the application in terms of Rule 9 of the Regulations.
3. A Case Management Discussion (“CMD”) was fixed for 2 November 2023 at 2pm. The application and details of the CMD fixed were served on the Respondent by Sheriff Officer on 29 September 2023. In terms of said notification, the Respondent was given an opportunity to lodge written representations by 19 October 2023. No representations were lodged prior to the CMD.

Case Management Discussion

4. The CMD took place on 2 November 2023 by telephone conference call. The CMD was attended on behalf of the Applicant by Mrs Jacqueline Barr of AM Lettings Ltd, the Applicant’s letting agent and by the Respondent.
5. Ms Waugh, the Respondent, was asked to confirm her position in respect of the application for eviction. She confirmed that she was not opposing the eviction as she is aware of the Applicant’s circumstances and accepts that he needs to sell the Property. She advised, however, that the reason she was attending the CMD was so that she is aware of what is happening as she has not had clear communication from the Applicant on this, particularly regarding timescales. Ms Waugh confirmed that the Applicant had first advised her regarding the circumstances in February 2022 but there were then various delays and the 6 months’ ban on evictions. She accepts that she was served with all the relevant notices and confirmed that she sought advice from the local authority when she was served with the first notice in January 2023. She has received some advice from them and has an appointment with them tomorrow so that she can advise of the outcome of the CMD today. Ms Waugh understands that the Council will start the process for finding her alternative housing once they have it confirmed in writing that an eviction order has been granted. Ms Waugh advised that the Property is currently occupied by herself and her adult son, aged 25, and that the local authority have the details of this.
6. The parties were advised by the Legal Member that the Tribunal requires to be satisfied not only that the ground for eviction is met, namely termination of a Short Assured Tenancy at its ish in terms of Section 33 of the Act, but also that it is reasonable in the circumstances for the Tribunal to grant the eviction order sought. Mrs Barr advised that the title to the Property is in joint names but that the Applicant and his partner have separated and therefore require to sell the Property. She confirmed that the Applicant had advised Ms Waugh some time ago that this would be required and understands from the Applicant that he has had several discussions with the Ms Waugh since February 2022, including quite recently. Reference was made to supporting documentation lodged with the Tribunal. Mrs Barr confirmed that the Notice to Quit and Section 33 Notice were served appropriately on 25 January 2023 and the application lodged with the Tribunal after the notice period had

expired as the Property was still being occupied by the Respondent. Mrs Barr confirmed that the Applicant is still looking for an eviction order today.

7. The Tribunal adjourned the proceedings briefly in order to deliberate in private and, on re-convening, the Legal Member advised that the Tribunal had decided to grant the eviction order sought and that the detailed written Decision would be issued to parties shortly. The timescales for the order being issued and thereafter being enforceable were also explained to parties. The parties were thanked for their attendance and the CMD was brought to a close.

Findings in Fact

1. The Applicant is the joint owner and landlord of the Property.
2. The Respondent is the tenant by virtue of a Short Assured Tenancy which commenced on 7 April 2008.
3. The Applicant ended the contractual tenancy by serving a Notice to Quit and Section 33 Notice on 25 January 2023, specifying the end of the notice period (2 months) as 6 April 2023, an ish date in terms of the lease. Both notices were in the correct form, provided sufficient notice and were served validly on the Respondent by way of Sheriff Officer.
4. The Respondent has remained in possession of the Property following expiry of the notice period.
5. This application was lodged with the Tribunal on 11 July 2023, following expiry of the notice period.
6. The Respondent participated in the CMD and does not contest the application.

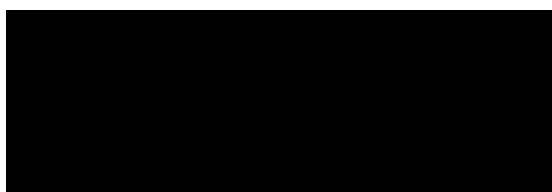
Reasons for Decision

1. The Tribunal was satisfied that the Respondent understood the position and was not wishing to contest the eviction application.
2. The Tribunal was satisfied that pre-action requirements including the service of the Notice to Quit and Section 33 Notice in terms of the 1988 Act had been properly and timeously carried out by the Applicant prior to the lodging of the Tribunal application. Section 33(1) of the Act states that an order for possession shall be granted by the Tribunal if satisfied that the short assured tenancy has reached its finish; that tacit relocation is not operating; that the landlord has given to the tenant notice stating that he requires possession of the house; and that it is reasonable to make an order for possession. The Tribunal was satisfied that all requirements of Section 33(1) had been met.

3. As to reasonableness, the Tribunal considered the oral submissions of both Mrs Barr and Ms Waugh at the CMD and took into account the circumstances of both parties in reaching their decision. The Tribunal was persuaded that the Applicant had a legitimate reason for requiring possession of the Property back and that the Respondent understood and accepted that reason and also that she had been made aware of the circumstances by the Applicant some time ago (February 2022). The Tribunal noted that the Respondent has been seeking alternative accommodation through her local authority and appears to have been receiving advice from the local authority since she was served with the various notices in January 2023. The local authority are aware of the Respondent's housing needs, given that she resides with an adult son and are aware that the CMD is taking place today. The Tribunal was also aware, in granting the order today, that given the terms of the Cost of Living (Tenant Protection) (Scotland) Act 2022, there was still a fairly lengthy period before the order could be enforced and that this would provide the Respondent a further opportunity to secure alternative accommodation. In all of the circumstances, the Tribunal considered that the likely impact on the Respondent of granting the eviction order was outweighed by the impact on the Applicant and the joint owner of the Property were the order not to be granted. The Tribunal was therefore satisfied that it was reasonable to grant the order sought.

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.



Legal Member/Chair

2 November 2023
Date