



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/23/1732

Re: Property at 8b Sheldrake Place, Spateston, PA5 0TE (“the Property”)

Parties:

Mrs Mamie Ralston, 10 Lowes Drive, Inverurie, AB51 6DB (“the Applicant”)

Miss Kelly Anne Connery, 8b Sheldrake Place, Spateston, PA5 0TE (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for possession of the property and the removal of the Respondent from the property.

Background

1. By application dated 26 May 2023 the Applicant’s representative Miss Sharon Ralston applied to the Tribunal for an order for possession of the property in terms of Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Applicant’s representative submitted a copy of a Notice to Quit and Section 33 Notice together with a form AT6 in support of the application.
2. Following further correspondence between the Applicant’s representative and the Tribunal administration the Applicant’s representative submitted copies of the tenancy agreement between the parties, Form AT5 and a Section 11 Notice and proof of service of the various notices.
3. By Notice of Acceptance dated 4 September 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

4. Intimation of the CMD was served on the Respondent by Sheriff Officers on 31 October 2023.

The Case Management Discussion

5. A CMD was held by teleconference on 12 December 2023. The Applicant attended in person and was represented by her daughter Miss Sharon Ralston. The Respondent also attended in person.
6. Miss Ralston explained that the property had been jointly owned by the Applicant and her husband who had passed away. She explained that it had always been her parents' intention to sell the property when they retired so that they would have a lump sum to use in their retirement. Miss Ralston said that she appreciated that it would be difficult for the Respondent to find somewhere else to rent in Johnstone as rents in the area had risen and her late father had not substantially increased the Respondent's rent over the duration of the tenancy. Miss Ralston stated that her main priority was to ensure that her mother could enjoy a good standard of life in retirement and that required recovery of the property in order that it could be sold. Miss Ralston said the property had been valued at £120000.00 but that would depend on its condition internally.
7. Miss Ralston confirmed that there was a Short Assured tenancy in place that had commenced on 12 September 2013 and that a Notice to Quit and Section 33 Notice had been served on the Respondent terminating the tenancy on 12 May 2023. Miss Ralston also confirmed that she had sent a Section 11 Notice to the local authority.
8. The Respondent explained that after she received the Notices, she had contacted her local Citizens Advice Bureau and had been told that she had to apply for housing to the Council and that she would probably not be offered any accommodation until the Tribunal determined the application. The Respondent went on to say that she had in fact been offered a new-build property by Link Housing Association and was going to view the property the following week and anticipated accepting the offer and paying the first rent and moving in by Christmas.
9. The Respondent confirmed she lived in the property with her son who was aged 20.
10. The Respondent confirmed that her current rent was £615.00 per month and that she was definitely going to accept the Housing Association offer and was not opposing the application. After some discussion the Respondent confirmed she did not oppose an order being granted. The Tribunal explained to Miss Ralston that the order would be subject to the provisions of the Cost of Living (Tenant Protection) (Scotland) Act 2022 ("COLA 2022") and therefore would not be enforceable for six months or the suspension or termination of the regulations which were currently 31 March 2024.

Findings in Fact

11. The Respondent took occupation of the property under a Short Assured Tenancy Agreement on 12 September 2013 for a period of one year and from month to month thereafter at an initial rent of £550.00 per calendar month.
12. The Applicant wishes vacant possession of the property in order to sell it to raise capital to fund her retirement.
13. The Respondent was served with a valid Notice to Quit and Section 33 Notice by recorded delivery post.
14. Intimation of the proceedings was sent to Renfrewshire Council by way of a Section 11 Notice by the Applicant's representative.
15. The Respondent has been offered alternative accommodation by Link Housing Association and intends to accept the offer and vacate the property in a few weeks' time.
16. The current rent for the property is £615.00 per month.
17. The Respondent resides at the property with her adult son.
18. The Respondent does not oppose an order for possession being granted.

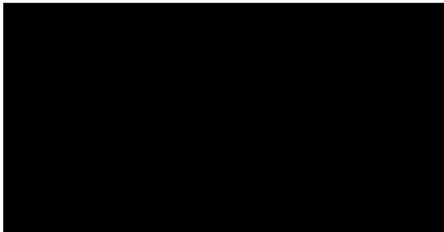
Reasons for Decision

19. The Tribunal was satisfied from the documents produced and the written representations and oral submissions that the Applicant and her late husband and the Respondent had entered into a Short Assured Tenancy that had commenced on 12 September 2013 and had endured for one year and then from month to month thereafter. The Tribunal was also satisfied that the Respondent had been properly served with a valid Notice to Quit and Section 33 Notice and that Renfrewshire Council had been given proper notice of the proceedings. The Tribunal therefore had to decide whether in all the circumstances it was reasonable to grant the order.
20. In reaching its decision the Tribunal took account of the fact that the Respondent no longer wished to remain in the property and had been offered alternative accommodation by Link Housing Association that she intended to accept. The Tribunal also took account of the fact that the Respondent did not oppose the application. Furthermore, the Tribunal was satisfied that the Applicant intended to sell the property in order to raise capital to fund her retirement and in all the circumstances the Tribunal was satisfied it was reasonable to grant an order for possession. The order will be subject to COLA 2022 and the enforcement of the order will therefore be delayed. However, if the Respondent vacates the property as intended before it has been issued the

Applicant's representative can advise the Tribunal administration that the order is no longer required.

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.



**Graham Harding
Legal Member/Chair**

**12 December 2023
Date**