



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 Housing (Scotland) Act 1988 (“the 1988 Act”)

Chamber Ref: FTS/HPC/EV/23/3093

Property at 7 Pladda Crescent, Irvine, North Ayrshire, KA11 1DP (“the Property”)

Parties:

Mr Lee Jones, Mrs Claire Jones, 13 Whieldon Grange, Harlow, Essex, CM17 9WG (“the Applicants”)

Miss Kelly Marshall, 7 Pladda Crescent, Irvine, North Ayrshire, KA11 1DP (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondent in favour of the Applicants.

Background

- 1. The Applicant seeks an order for possession of the property in terms of Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). A short assured tenancy agreement, AT5 notice, Notice to Quit, Section 33 Notice, Sheriff Officer Certificate of service and Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 were lodged in support of the application.**
- 2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 8 December 2023 at 2pm and that they were required to participate. Prior to the CMD, the Respondent’s representative notified the Tribunal that the application is not opposed, as the provisions of the Cost of Living Act 2022 would have the effect**

of delaying enforcement until 31 March 2024. The representative said that neither he nor the Respondent would be attending the CMD.

3. The CMD took place by telephone conference call on 8 December 2023. The Applicant was represented by Ms McKenzie. The Respondent participated.

Case Management discussion

4. Ms Marshall told the Tribunal that the application is not opposed. Her only concern is that she could end up in unsuitable temporary accommodation. She has a 15 year old son, currently doing his prelims. He attends a school that is close to the property. She works ten hours a week and is otherwise in receipt of universal credit and both child and adult disability payments. Both she and her son have health problems. She has applied for alternative accommodation from the Council and Housing Associations. Ms Marshall told the Tribunal that she has rent arrears of about £2000. This is because there is a shortfall between her housing cost payments and the rent. She is unable to afford the shortfall and cannot afford to continue to rent in the private sector
5. Ms McKenzie told the Tribunal that the Applicants have decided to sell the property. The rent no longer covers the mortgage payments and they cannot afford to continue to let it out. They have made a similar decision with their only other rental property. She advised that the rent arrears are currently £2140.
6. The Tribunal asked Ms Marshall whether the Tribunal should consider a delay in enforcement, in terms of Rule 16A of the Tribunal Procedure Rules, over and above the delay imposed by the Cost of Living Act. In response, Ms Marshall said that she was not seeking additional time as the upheaval of moving will cause stress whenever it takes place.

Findings in Fact

7. The Applicants are the owners and Landlords of the property.
8. The Respondent is the tenant of the property in terms of a short assured tenancy agreement.
9. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondents on 16 June 2023
10. The Respondent resides at the property with her son who is aged 15.
11. The Respondent has applied for alternative housing from the Council and housing associations.
12. The Respondent works part time and is in receipt of benefits.

13. The Respondent has incurred rent arrears of £2140 and cannot afford to continue to rent in the private sector
14. The Applicants intend to sell the property, as the rent no longer covers their mortgage costs.

Reasons for Decision

15. The application was submitted with a short assured tenancy agreement and AT5 Notice. The initial term of the tenancy was 1 March 2010 to 1 September 2010.
16. Section 32 of the 1988 Act states “(1) A short assured tenancy is an assured tenancy - (a) which is for a term of not less than 6 months; and (b) in respect of which a notice is served as mentioned in subsection (2) below. (2) The notice referred to in subsection (1)(b) above is on which – (a) is in such form as may be prescribed; (b) is served before the creation of the short assured tenancy; (c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under the tenancy; and (d) states that the assured tenancy to which it relates is to be a short assured tenancy.”
17. The Tribunal is satisfied that the tenancy agreement between the parties was for an initial term of 6 months and therefore meets the requirements of Section 32(1) of the 1988 Act. The Tribunal is also satisfied that an AT5 Notice was given to the Respondents prior to the creation of the tenancy. In the circumstances, the Tribunal determines that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act.
18. From the documents submitted with the application, the Tribunal is satisfied that the Applicant served a Notice to Quit and Section 33 Notice on the Respondents on 16 June 2023. The Notice to Quit called upon the Respondent to vacate the property on 1 September 2023, an ish date. The Notice contains the information prescribed by the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and complies with the terms of Section 112 of the Rent (Scotland) Act 1984. The Tribunal is satisfied that the Notice to Quit is valid and that the tenancy contract has been terminated. The Section 33 Notice was also served on 16 June 2023 and gave the Respondent more than two months’ notice that the Landlord wished to recover possession of the property. A Section 11 Notice was submitted with the application, with evidence that it was sent to the Local Authority. The Applicant has therefore complied with Section 19A of the 1988 Act.
19. Section 33 of the 1988 Act, (as amended by the Coronavirus (Recovery and Reform) (Scotland) Act 2022) states “(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 finish; (b) that tacit relocation is not operating; (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” Subsection 2 states “The period of notice to be given under subsection (1)(d) above shall be – (1) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period; (ii) in any other case, two months”. The Tribunal is satisfied that the tenancy has reached its finish and, as the Applicant has served a valid Notice to Quit, that tacit relocation is not operating. A valid notice in terms of section 33(d) has also been served on the Respondents, giving at least two months’ notice that the Applicant required possession of the property.

20. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession, in terms of Section 33(e) of the 1988 Act.

21. The Tribunal had regard to the following: -

(a) The Respondent does not oppose the application. She has incurred rent arrears and cannot afford the rent at the property. She hopes to be re-housed by the Local Authority.

(b) The costs associated with the property currently exceed the rental income.

(c) The Applicants wish to sell the property and the only other rental property that they own.

22. Although there is likely to be some disruption to the Respondent and her son, the Tribunal is satisfied that it would be reasonable to grant the order for the reasons outlined in Paragraph 21 above. The Tribunal is also satisfied that, as there will be a delay in enforcement because of the Cost of Living Act 2022, a further delay in enforcement is not appropriate.

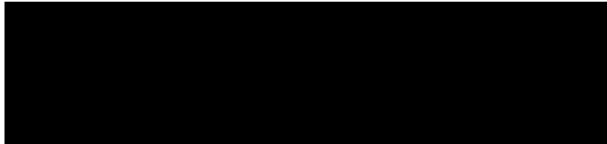
23. The Tribunal is satisfied that the Applicant has complied with the provisions of the 1988 Act and that it would be reasonable to grant the order.

Decision

24. The Tribunal determines that an order for possession of the property should be granted against the Respondent.

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.



Josephine Bonnar, Legal Member

8 December 2023