



**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/23/2970

**Re: Property at Ground Floor, Right, 5A Links Gardens, Edinburgh, EH6 7JH
("the Property")**

Parties:

**Fletearth Properties Limited, 1 Park Road, Eskbank, Dalkeith, EH22 3DF ("the
Applicant")**

**Ms Lynsey Stuart, Ground Floor, Right, 5A Links Gardens, Edinburgh, EH6 7JH
("the Respondent")**

Tribunal Members:

Nairn Young (Legal Member) and Ann Moore (Ordinary Member)

Decision

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

- Background

This is an application for an order for possession of the Property, which is let to the Respondent by the Applicant in terms of an assured tenancy. It called for a case management discussion ('CMD') on 9 January 2024 at 2pm, by teleconference. The Applicant was represented on the call by Mr MacAulay, of Ennova Law, solicitors. The Respondent was represented by Ms Elvira Villa of Granton Information Centre.

- Findings in Fact

The facts of the case were not in dispute. Those relevant to the Tribunal's decision were as follows:

1. The Respondent let the Property from the Applicant under a short assured tenancy with an initial term of six months from 5 July 2013.
2. Following the end of that initial term, the tenancy ran on by tacit relocation on a six-monthly basis.
3. On 11 January 2023, the Applicant served a notice to quit on the Respondent, terminating the tenancy on 5 July 2023.
4. Also on 11 January 2023, the Applicant served notice that it required possession of the Property on 5 July 2023, in terms of s.33(1)(d) of the Housing (Scotland) Act 1988.
5. Since 5 July 2023, the Respondent has continued to occupy the Property under a statutory assured tenancy.
6. The Applicant is a private company formed in order to carry out the letting business of its original owners, Mr Ian Malcolm and his wife.
7. Mr Malcolm's wife died some years ago and he wishes to wind up the company and retire from the business.
8. In pursuit of that plan, the company has been going through a process of selling all of its properties over the last year to two years, which it hopes finally to achieve by the end of 2024.
9. The Applicant has been upfront in informing the Respondent of its intention to sell the Property, engaging with her even before service of the notice to quit.

10. If the Applicant were to sell the Property with the Respondent in situ, it would take significantly longer to sell; and the Applicant would achieve significantly less of a return on its investment.
11. The Respondent is up-to-date on her rental payments.
12. The Respondent occupies the Property with her son, who has just commenced secondary school, at the catchment school. He receives additional support at that school and would be negatively impacted if forced to move schools.
13. The Respondent often suffers from poor mental health and has a support network in the local community which helps her with that.
14. City of Edinburgh Council has declared a housing emergency in its area.
15. The Respondent has engaged with the local authority; but will not receive any priority status for rehousing unless and until an order for her eviction is granted.
16. Even with priority status, it is most likely that the Respondent and her son would have to spend some time in temporary accommodation before being offered a suitable property by the local authority.
17. It is the Respondent's intention to seek private sector housing in the first instance, should she be evicted.
18. Even if the Respondent has to move from the area, it would be possible for the Respondent's son to continue to attend the school he currently attends, albeit that would require the Respondent to invest time and money in transporting him there and back again.
19. The Respondent has some savings from the sale of a property of her own, which she hopes to apply to setting up her own business.

20. The Applicant is willing to hold off enforcing any order granted until the end of April 2024, to relieve some of the pressure on the Respondent.

- Reasons for Decision

21. In this case, parties were in agreement that the technical requirements of s.33 of the Housing (Scotland) Act 1988 had been met and that, therefore, the only live question that requires to be determined is that of whether or not it is reasonable to grant an order for possession of the Property.

22. Answering that question requires a difficult balancing exercise on the part of the Tribunal. In this case, considering the various factors that were presented to it on each side, the Tribunal determined that it was reasonable in the circumstances to grant the order.

23. The Applicant served the notice to quit almost precisely a year ago and had previously started to engage with the Respondent to make her aware of its intentions. It is perfectly understandable that Mr Malcolm wishes to wind up his business and he has taken an admirably flexible and understanding approach to this already. It is to be recalled that neither party, when the tenancy was entered into, could have had in mind that the previous mechanistic approach to recovery of possession would be replaced by one requiring a landlord to demonstrate reasonableness. Against that background, it is notable that the Respondent has in effect been given over a year already to attempt to make other arrangements. Although she has not been able to do so as yet, fundamentally it would not be reasonable to expect the Applicant to wait indefinitely for that to happen to be allowed to realise its assets and for Mr Malcolm to be allowed to retire. That point carries even more force when it is considered that the local authority will not take any action to rehouse the Respondent unless and until an order is granted against her.

24. While there is no doubt that this order will have a negative impact on the Respondent and, possibly, her son, there are several mitigating factors that the Tribunal consider will lessen that impact. The Applicant has undertaken not to enforce any order until the end of April 2024. The Tribunal considered that a period of almost 4 months should be sufficient for someone with a young teenage son, and with the specific needs she and he have, to be found suitable accommodation by the local authority, once they are given the proper priority that the order will give them. The impact on the Respondent's son's education may also be mitigated by the fact that he will still be in a position to attend the same school, even if it should be necessary for them to move from the area. A similar consideration applies to the existence of the Respondent's support network in this area. There does not seem to be any particular reason why that network should not continue to be effective, even if the Respondent has to live elsewhere. The Respondent has some savings; and while these may have been earmarked for another purpose, they do provide the Respondent with a certain safety net which she may now have to use. It would not be fair to refuse to grant an order purely on the basis that the preservation of her savings should take priority over the Applicant's financial interests.

25. Against that background, the Tribunal did also consider whether the fact that it is possible for the Property to be sold with a sitting tenant meant that it would be unreasonable to grant the order. While it is undoubtedly a narrower point, the Tribunal ultimately considered that the Applicant's interest in maximising the return on its investments and, in particular, the impact that approach would have on the timescale to achieve a sale, meant that it would not be reasonable to insist on this.

26. The Respondent referred to a previous decision of the Tribunal (ref: FTS/HPC/EV/22/2661) in which it was found that it was not reasonable for the landlord to recover possession, notwithstanding that the tenancy had been a short assured tenancy that had been correctly terminated. The Tribunal considered that that case was determined on its facts, which were radically different from those in this case, and did not therefore find it of help in

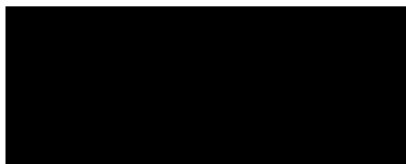
considering the question of reasonableness here. In particular, it is notable that the Tribunal in that case found that the landlord had no reason for seeking to recover possession and was unable to say what she would do with the property when it was recovered. That is obviously quite different from the situation in this case.

- Decision

Order for possession granted,

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.



9 January 2024

Legal Member/Chair

Date