



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 and Rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/EV/23/3232

Property at Smithy House, 1 Station Row, Macmerry, East Lothian, EH33 1PD

Applicant: Miss Tracey Martin residing at 52 Chatsworth Drive, Nuneaton, CV11 6SB

Respondent: Miss Tammy Clark residing at Smithy House, 1 Station Row, Macmerry, East Lothian, EH33 1PD

Tribunal Members:

Karen Moore (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory process for eviction and recovery of possession having been established, it is reasonable to grant the Order sought.

1. By application received on 14 September 2023 (“the Application”), the Applicant applied to the Tribunal for an Order for possession of the Property based on the service of statutory notices to bring the tenancy to an end. The Application comprised copy Notice to Quit and copy Section 33 Notice with proof of service, copy short assured tenancy agreement with relevant AT5 between the Parties and copy notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to East Lothian Council, being the relevant local authority. The Application explained that the Applicant required to terminate the tenancy in order to sell the Property and contained written evidence in support of this intention.
2. The Application was accepted by the Tribunal and a Case Management Discussion (the “CMD”) was fixed for 21 December 2023 at 14.00 by telephone conference. The CMD was intimated to the Parties and to the Respondent, in particular, by Sheriff Officer on 8 November 2023.
3. Prior to the CMD, the Applicant submitted written representations showing a significant increase in her mortgage repayments.

CMD

4. The CMD took place on 21 December 2023 at 14.00 by telephone. Both the Applicant, Miss Martin, and the Respondent, Miss Clark, took part and neither was represented.
5. The Tribunal explained the purpose of the CMD and that advised the Parties that it was satisfied that the statutory procedure for the Application had been carried out correctly. The Tribunal explained that it was required to consider the reasonableness of the Application.
6. The Tribunal asked the Miss Clark if she opposed the Application and she advised that she did not. She explained that she understood that Miss Martin wanted to sell the Property and stated that, although she had approached the local authority, she had had little assistance. With regard to her personal circumstances, Miss Clark advised the Tribunal that she is a single parent on state benefits with three daughters aged 14 years, 10 years, 9 years and a son aged 4 years. She explained that her 10 year old daughter and 4 year old son both have additional needs. She stated that the children attend a local school but the two children with additional needs may be moved to different schools. Miss Clark stated that both her children's school and the hospital which they attend are supportive of her. Miss Clark stated that her parents reside relatively close by and are a support to her.
7. Miss Martin stressed that Miss Clark is a good and exemplary tenant. She explained that she requires to terminate the tenancy in order to sell the Property as the mortgage payments for it now exceed the rent by over £500.00 per month. Miss Martin advised the Tribunal that she has other rental properties all in the same situation and is running at a loss of around £1,600.00 per month and is in rented accommodation herself. She explained that she requires to terminate the tenancy in order to sell the Property and explained that she was selling this and her other properties to buy a home for herself. Miss Martin stated that Mrs. Drummond had contacted East Lothian Council on behalf of Miss Clark to explain the situation but they had indicated that an eviction order would need before they took action.

Issue for the Tribunal

8. The issue for the Tribunal is to determine if the statutory ground is established and if it is reasonable to grant the Order. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "*may do anything at a case management discussionincluding making a decision*". The Tribunal took the view that it had sufficient information to make a decision. Therefore, the Tribunal proceeded to determine the Application.

Findings in Fact

9. From the Application and the CMD, the Tribunal made the following findings in fact: -
 - i) There is a short assured tenancy of the Property between the Parties;
 - ii) A valid Section 33 Notice and a valid Notice to Quit were served;

- iii) The Respondent has not vacated the Property but is prepared to do so if housed by the local authority;
- iv) The Respondent does not oppose the Application;
- v) The Applicant intends to sell the Property due to significant financial pressures and requires vacant possession to do so;
- vi) The Applicant relies on the rent as source of income;
- vii) The current level of rent is £500.00 per month less than the mortgage commitment;
- viii) The Respondent is single parent on state benefits with four school age children, two of whom have special needs and
- ix) The Respondent has local support.

Decision and Reasons for Decision

10. The Tribunal had regard to all the information before it and to its Findings in Fact.
11. The Tribunal took the view that the statutory procedure to end the tenancy had been followed.
12. The Tribunal then considered if it could be satisfied that it is reasonable to issue an eviction order. The Tribunal had regard to the fact that the Applicant intends to sell the Property due to significant financial pressure and requires vacant possession to do so. The Tribunal noted that when the tenancy commenced, the Applicant had had an absolute right to terminate it on the proper statutory notice.
13. The Tribunal had sympathy and empathy for the Respondent and accepted that the Application has come about through no fault of the Respondent. The Tribunal accepted the difficulties which the Respondent face in trying to obtain secure accommodation which meets her and her family's particular housing needs. The Tribunal had regard to statutory protection available to the Respondent and her family in respect of both the Scottish homelessness legislation which obliges the local authority to provide assistance and the Cost of Living (Tenant Protection) Scotland Act 2022 which has put in place an extended period before an eviction Order can be enforced.
14. The Tribunal took the view that continuing the tenancy is not in the interests of either the Applicant or the Respondent. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order.

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.

Karen Moore

Legal Member/Chair

21 December 2023

Date