



**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/23/3261

**Re: Property at 7 Culzean Crescent, Newton Mearns, Glasgow, G77 5SW (“the
Property”)**

Parties:

**Mr Russell Macmillan, 8 Blackfarm Road, Newton Mearns, Glasgow, G77 5HT
 (“the Applicant”)**

**Ms Josephine Hall, 7 Culzean Crescent, Newton Mearns, Glasgow, G77 5SW
 (“the Respondent”)**

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Andrew Murray (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined to grant an order for eviction under section 33 of the
Housing (Scotland) Act 1988**

Background

1. By application dated 14th September 2023 the applicant seeks an order for eviction, relying on section 33 of the Housing (Scotland) Act 1988.
2. The applicant lodged the following documents with the application
 - Short Assured Tenancy agreement with a commencement date of 10th January 2012
 - AT5 notice in terms of section 32 of the Housing (Scotland) Act 1988
 - Notice under section 11 of the Homelessness Etc. (Scotland) Act 2003

- Notice in terms of section 33 of the Housing (Scotland) Act 1988 dated 7th July 2023 with proof of service
 - Notice to quit dated 7th July 2023 with proof of service
3. A case management discussion (“cmd”) was assigned for 8th January 2024

Case management discussion –8th January 2024- teleconference

4. The applicant was not personally present and was represented at the cmd by Isabelle Harte, lettings agent from Northwood Glasgow Ltd. Keith Robbin, Director of Northwood Glasgow Ltd was also in attendance. The respondent was not present or represented. The Tribunal was satisfied that proper notice of the cmd had been given to the respondent and in particular, Sheriff Officers had served relevant papers personally on the respondent. The Tribunal determined to proceed with the cmd in the respondent’s absence in terms of Rule 29.
5. Ms Harte sought an order for eviction based on section 33. She explained that the landlord intended to sell the property however the ground for eviction was section 33 and a notice to quit and section 33 notice had been served on that basis.
6. The Tribunal noted that the tenancy agreement was signed between the applicant and joint tenants – the respondent and Graeme Hall. Ms Harte explained that Mr Hall had given 2 month’s written notice that he wished to leave the tenancy on 28th July 2022. Since then he had moved out and the respondent continued as the sole tenant. Rent continued to be paid and there were no outstanding rent arrears. Ms Harte submitted that the effect of the notice from Mr Hall was to prevent tacit relocation from operating. This meant that the respondent occupied the property as a statutory assured tenant. She submitted that the notice to quit and section 33 notices were valid.
7. In relation to whether it was reasonable to grant an order for eviction, Ms Harte explained that the tenant resided in the property with her three children aged 29, 21 and 16 years old. The property had 2 bedrooms. Ms Harte advised that the respondent had contacted the letting agents by telephone on 18th December 2023. She advised that she had sought accommodation from East Renfrewshire Council and was going to view a council property in Barrhead. Ms Harte advised that she provided tenants with information regarding alternative

sources of housing such as housing associations and also provided information on where they can obtain advice. She explained that the applicant was seeking an order for eviction as the lease was not profitable and he wished to sell the property. She explained that he had one property which he let through the letting agency. The mortgage on this property had increased and the rent for the property was fairly low and did not cover the increase in mortgage monthly payments which had led to financial concerns for the applicant. The current monthly rent was £570.

Findings in fact

8. Parties entered into a tenancy agreement with a commencement date of 10th January 2012.
9. Monthly rent due in terms of the agreement was £570.
10. The respondent does not seek to defend the present action seeking an order for eviction.
11. A section 33 notice, notice to quit and section 11 notice have been served on the respondent.
12. The applicant resides in the property with her three children aged approximately 29, 21 and 16.
13. The applicant has sought assistance from East Renfrewshire Council to access alternative accommodation and has been offered alternative accommodation to view.
14. The applicant intends to sell the property to minimise financial losses arising from the level of rent payable under the tenancy agreement.

Reasons for the decision

15. The Tribunal had regard to the application and the documents lodged by the applicant. The Tribunal also took into account Ms Harte's submissions at the cmd.
16. The Tribunal was satisfied that a section 33 notice, notice to quit and section 11 notices had been served on the respondent. The Tribunal accepted that the joint tenant Graeme Hall had not resided in the property since giving notice that he was leaving the property in July 2022. The Tribunal took into account that the respondent had lodged no written submissions challenging the validity of

the notices or the manner in which they were served prior to the cmd and had not sought to defend the application on that or any other basis.

17. The Tribunal required to consider whether it was reasonable to grant an order for eviction. The Tribunal noted that the section 33 notice and notice to quit had been served on the respondent on 7th July 2023, six months prior to the cmd which provided a substantial period of time for the respondent to seek advice on defending the application or seek alternative accommodation. The Tribunal noted that the applicant had little information on the personal circumstances of the respondent and her children other than their ages but accepted that it was not routine for more personal details to be held by the letting agents. The Tribunal gave particular weight to the information provided by the letting agent that the respondent had advised them that she was viewing an East Renfrewshire Council property in December 2023. The Tribunal considered this indicated that the respondent was actively involved in seeking alternative accommodation and was having some success in that regard. The Tribunal noted that as it had 2 bedrooms the current property may be somewhat overcrowded and the respondent may be seeking a larger property. The Tribunal gave weight to the fact that the respondent had not taken any steps to oppose the application or lodge a defence. The respondent had phoned the applicant's in December and was engaged with the search for an alternative property and had chosen not to defend the application under consideration.
18. In the foregoing circumstances the Tribunal determined that it was reasonable to grant an order for eviction.

Decision

The Tribunal determined to grant an order for eviction.

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.



8 January 2024

Legal Member/Chair

Date

1