



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/23/3530

Re: Property at 41 Seamore Street, Largs, KA30 9AN (“the Property”)

Parties:

Mrs Sandra Macleod, Mr Kenneth Macleod, 20 Castlepark Gardens, Fairlie, KA29 0BS (“the Applicant”)

Mr Allan Simpson, 41 Seamore Street, Largs, KA30 9AN (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of the Respondent)

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 5 October 2023 the Applicant applied to the Tribunal for an order for possession of the property under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Applicant submitted a copy of a tenancy agreement, Form AT5, Notice to Quit, Section 33 Notice with Sheriff Officers Certificate of Service, Section 11 Notice and other documents in support of the application.
2. By Notice of Acceptance dated 25 October 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 23 November 2023.

The Case Management Discussion

4. A CMD was held by teleconference on 31 January 2024. The Applicant's representative, Mrs Carol Dickie attended in person. The Respondent did not attend nor was he represented.
5. Mrs Dickie explained that she had spoken to the Respondent prior to Christmas and he had told her that he had been offered a Local Authority bungalow in West Kilbride which he had accepted. Mrs Dickie said that the Social Work Department had offered to provide the Respondent with assistance to move. She went on to say that she had contacted the Respondent a few days prior to the CMD and the Respondent had said he hoped to move by the middle of the following week.
6. Mrs Dickie said the Applicants were in their eighties and had decided to give up being landlords having already sold their three other rental properties and moved into a fourth.
7. Mrs Dickie explained that the Respondent was an older gentleman who had recently undergone eye surgery and was currently unable to drive. Mrs Dickie said that she thought that he did intend to move once his new property was ready. After some discussion it was agreed that although it appeared that the Notice to Quit and Section 33 Notice had been properly served and that there was a Short Assured Tenancy the Tribunal would delay making a decision for a short period to see if the Respondent did move out of the property.

Post Case Management Correspondence

8. By email dated 26 January 2024 Mrs Dickie advised the Tribunal that the Respondent had still not vacated the property as his new property had no floor coverings.
9. By email dated 29 January 2024 Mrs Dickie advised the Tribunal that the Respondent had still not returned the keys to the property.

Findings in Fact

10. The parties entered into a Short Assured Tenancy that commenced on 27 September 2016 for a period of 6 months until 27 March 2017 and from month to month thereafter.
11. The Respondent was served with a Notice to Quit and Section 33 notice by Sheriff Officers on 23 May 2023.
12. A Section 11 Notice was sent to North Ayrshire Council by email on 3 October 2023.
13. The Respondent has found alternative accommodation and has intimated his intention to remove from the property.

14. The Applicants are in their eighties and wish to cease being landlords and are disposing of their properties.

Reasons for Decision

15. The Tribunal was satisfied from the written representations and documents together with the oral submissions that the parties entered into a Short Assured tenancy that commenced on 27 September 2016 and endured until 27 March 2017 and from month to month thereafter. The Tribunal was also satisfied that a valid Notice to Quit and Section 33 Notice had been served on the Respondent by Sheriff Officers and that proper intimation of the proceedings had been given to North Ayrshire Council. Before granting an order for possession the Tribunal had to be satisfied that it would in the circumstances be reasonable to do so. In reaching its decision the Tribunal took account of the fact that the Respondent had not entered the proceedings and had advised the Applicant's representatives that he had been offered alternative accommodation by the local authority that he had accepted and that he intended to move out of the property. The Tribunal also took account of the Applicants ages and the fact that they wished to give up being landlords and sell the property. In these circumstances the Tribunal was satisfied it was reasonable to grant the order sought. The Tribunal noted that the order would be subject to the terms of the Cost of Living (Tenant Protection) (Scotland) Act 2022.

Decision

16. The Tribunal being satisfied it had sufficient information before it to make a decision without the need for a hearing finds the Applicant entitled to an order for possession of the property and the removal of the Respondent from the property.

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**

**1 February 2024
Date**