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/23/1117

Re: Property at 76 Greendykes Road, Broxburn, EH52 5BS ("the Property")

Parties:

Miss Shelley McDonald, 20 Parkwood Gardens, Broxburn, EH52 5RE ("the Applicant")

Miss Roxanne Hughes, 76 Greendykes Road, Broxburn, EH52 5BS ("the Respondent")

Tribunal Members:

George Clark (Legal Member) and David Fotheringham (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be decided without a Hearing and made an Order for Possession of the Property.

Background

1. By application, dated 15 April 2023 and finalised on 7 September 2023, the Applicant sought an Order for Possession of the Property under Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act"), namely recovery of possession on termination of a Short Assured Tenancy. The application stated that the Applicant wishes to sell the Property, due to the cost of living and increases in the interest rate on her mortgage.

2. The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Parties, commencing on 2 July 2015 at a rent of £425 per month, and, if not brought to an end on 2 January 2016, continuing on a monthly basis thereafter until terminated by either party. The Applicant also supplied copies of a Notice given under Section 33 of the 1988 Act and a Notice to Quit, both dated and served by Sheriff Officers on 2 November 2022, and both requiring the Respondent to vacate the Property by 2 April

2023. The Applicant was unable to locate the AT5 Notice served prior to the commencement of the tenancy but asked the Tribunal to have regard to the fact that, in signing the Short Assured Tenancy Agreement, the Respondent had acknowledged that it was served on her before the creation of the tenancy.

3. On 20 November 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 11 December 2023. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

4. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 15 January 2024. Both Parties were present.

5. The Applicant told the Tribunal that, with variable mortgage rates having gone up a number of times and being unable to raise the rent by more than 3%, she just wants to sell the Property, as she can no longer afford it. She has a mortgage over her own home, works full time and has her family to provide for. Her partner has to work two jobs.

6. The Respondent told the Tribunal that she lives in the Property on her own. She has approached the local authority to be rehoused, but the Council will regard her as having intentionally made herself homeless if she leaves without a Tribunal Order having been made against her. She confirmed that her rent was up to date.

7. The Tribunal questioned the Respondent closely on her evidence, to be satisfied that she did not feel she was being pressurised into saying that she was not opposed to the Tribunal making an Order for Possession.

Reasons for Decision

8. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

9. Section 33 of the 1988 Act states that the Tribunal may make an Order for Possession of a house let on a Short Assured Tenancy if it is satisfied that the Short Assured Tenancy has reached its ish, that tacit relocation is not operating, that no further contractual tenancy is for the time being in existence, that the landlord has given to the tenant notice stating that he requires possession of the house, and that it is reasonable to make the Order for Possession.

10. The Tribunal was satisfied that the tenancy had reached its ish, that, by service of the Notice to Quit, tacit relocation was not operating, that there was no further contractual tenancy in existence between the Parties and that the Notice required under Section 33 of the 1988 Act had been properly given. The remaining matter for the Tribunal to consider was, therefore, whether it would be reasonable to issue an Order for Possession.

11. In arriving at its decision as to whether it would be reasonable to make an Order for Possession, the Tribunal considered carefully all the evidence before it and noted in particular the financial pressures described by the Applicant and the fact that the Respondent had clearly stated that she was looking to be re-housed by the Council, but that they would do nothing to help her unless the Tribunal made an Order for Possession.

12. Having taken into account all the evidence, written and oral, before it, the Tribunal decided that it would be reasonable to make an Order for Possession of the Property. The Tribunal was also, in the circumstances, prepared to overlook the fact that the Applicant could not locate the Form AT5 Notice, the Respondent having acknowledged by signing the Tenancy Agreement, that she had received it in advance.

13. The application is affected by The Cost of Living (Tenant Protection) (Scotland) Act 2022.

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.

_____   **15 January 2024**

Legal Member/Chair   **Date**