



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 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules)

Chamber Ref: FTS/HPC/EV/23/4540

Re: Property at 41 Delta Drive, Musselburgh, East Lothian, EH21 8HW (“the Property”)

Parties:

Ms Qurat Al Ain, 499a Gorgie Road, Edinburgh, EH11 3AJ (“the Applicant”)

Ms Karen Rodger, 41 Delta Drive, Musselburgh, East Lothian, EH21 8HW (“the Respondent”)

Tribunal Members:

Andrew Cowan (Legal Member) and Helen Barclay (Ordinary Member)

Decision

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

Background

1. By application dated 18th December 2023, the Applicant sought an order for possession of the Property under section 33 of the Housing (Scotland) Act

1988 (“the Act”) and in terms of rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

2. The application was accompanied by a copy of a Short Assured tenancy dated 15th April 2013, an AT5 dated 15th April 2013, a Notice to Quit and Section 33 Notice dated 25th August 2023 together with Sheriff Officers’ execution of service dated 28th August 2023 and a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 served upon Edinburgh City Council by email dated 18th December 2023.
3. On 22nd January 2024 the application was accepted by the President of the First-tier Tribunal for Scotland Housing and Property Chamber and referred for determination by this tribunal.
4. A Case Management Discussion was arranged to take place on 12th April 2024 and appropriate intimation of that hearing was given to all parties.
5. By email dated 3rd April 2024 the Respondent’s solicitor lodged written representations with the tribunal. Those representations were copied to the Respondent by the tribunal administration.

The Case Management Discussion

6. The Case Management Discussion (CMD) took place on 12th April 2024. The hearing was held using teleconference facilities. The Applicant was not personally present, but was represented by her solicitor, Ms Siobhan Brown of BTO Solicitors. The Respondent also joined the CMD.

Discussions at CMD

7. The tribunal asked various questions of both the Applicant’s solicitor and the Respondent in relation to the Application.
8. Ms. Brown confirmed to the Tribunal that the Applicant continued to seek an order for recovery of possession of the Property. Ms Brown referred the tribunal to the written submissions which had been lodged on behalf of the Applicant by email dated 3rd April 2024. It was explained to the Tribunal that there was an error in paragraph 1 of those written submissions. It was confirmed that the Applicant is the owner of the Property. The Applicant is also the Landlord in terms of the tenancy agreement between the parties.

9. Ms. Brown explained to the Tribunal that the tenancy between the parties is a short assured tenancy. The Applicant had served the Respondent with a notice to quit and a notice in terms of section 33 (1) (d) of the Act. Accordingly, the short assured tenancy had reached its end and tacit relocation is not operating.
10. Ms. Brown addressed the tribunal on the question as to whether it was reasonable to make an order for possession. She explained to the Tribunal that the Applicant had purchased the Property in her name using funds which were loaned to her by her father. The Applicant now wished to sell the Property (after carrying out some necessary repairs) to allow her to repay her father the sums which she had borrowed at the time the Property was purchased.
11. The Applicant's father required the repayment of the loan to allow him to gift half of that loan repayment to his other daughter. That gift would allow that daughter and her family to obtain suitable accommodation for her and her family.
12. The Applicant's father wished to use the other half of the loan repayment to allow him to sell his own home and to purchase another home for him and the Applicant's mother. The Applicant's parents require to acquire alternative accommodation as the Applicant's mother's health has deteriorated significantly in recent months and the current first floor flat occupied by the Applicant's parents is no longer suitable for her mobility and health needs. The Applicant's parents also wish to move to a home close to the hospital where the Applicant's mother is required to attend and receive treatment on a regular basis. In summary, the Applicant requires to sell the Property to repay a loan due to her father allowing the Applicant's parents to purchase an alternative home which was more suitable for their mobility needs and closer to the hospital.
13. The Respondent confirmed that she had received a copy of the Application. She had taken advice from the local authority housing department in relation to the application. She did not wish to seek any further advice. The Respondent understood that, to grant an order for repossession, the tribunal had to be satisfied that it was reasonable to grant such an order in all the circumstances of the case and taking into account the individual circumstances of the parties.
14. The Respondent resides in the Property with her four children aged 19, 16, 12 and 8. Her eldest child is working and supports the Applicant by paying part of the rent due for the Property. The Respondent is not working and receives housing benefit as part payment of the rent due for the Property. The Tenant does not wish to remain in the Property. She explained that the Property needed to be repaired to eradicate dampness and mould in the Property. She fully understands that, if an order was granted for repossession of the Property, she,

and her family, would be homeless and would require to seek alternative accommodation from the local authority, or other housing provider. She further recognises that, in those circumstances, permanent accommodation suitable for the needs of her family may not be immediately available and that she and her family may require to move to temporary homeless accommodation for an unspecified period.

15. The Respondent confirmed that she had taken advice from the local authority in relation to the application. They had advised her that the notices which had now been served on her by the Applicant were considered by the local authority as valid and enforceable. The Respondent understood that she could seek to argue that repossession of the Property was not reasonable, but she did not wish to do so as she did not wish to remain in the Property given its current disrepair.

Findings in Fact

16. The Applicant and the Respondent, as respectively the landlord and the tenants, entered into a tenancy of the property by an agreement dated 15h April 2013.

17. The tenancy is a short assured tenancy in terms of the Act

18. On 28th August 2023, the Applicant served upon the Respondent a notice to quit and a notice in terms of section 33 (1) (d) of the Act. These notices were served on the respondent by recorded delivery post. Said notices became effective on 31st October 2023.

19. The notices informed the tenant that the landlord wished to seek recovery of possession using the provisions of section 33 of the Act.

20. The notices were correctly drafted and gave appropriate periods of notice as required by law.

21. The basis for the order for possession was accordingly established.

Decision and reasons

22. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties.

23. In this case the tribunal finds that it is reasonable to grant the order.

24. The landlord has indicated a desire to recover possession of the Property to allow her to repay a loan to her father. That repayment is required to allow the Applicant's parents, and her sister, to move into separate properties which are more suitable for their own needs.

25. The Tribunal accept that, if an order is granted, the Respondent will become homeless. In those circumstances the Respondent will require to find an alternative an affordable private let or to seek accommodation from the Local Authority.

26. The Tribunal note that the Respondent does not wish to remain in the Property. She considers the Property requires substantial repair and is, accordingly, no longer suitable for the needs of her family. She recognises the consequences of an order for possession and does not wish to oppose the grant of such an order.

27. Whilst the Tribunal might be persuaded, in general, that the evidence of the parties supported a finding that it was not reasonable to grant an order for possession, the overriding factor is that the Respondent does not wish to stay in the Property. In these circumstances the Tribunal finds that it is reasonable to grant an order for possession.

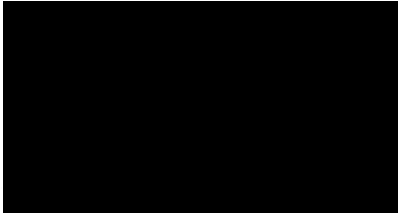
28. The Tribunal have determined that in the circumstances of the case it would be appropriate to allow the Respondent a longer period to remove from the Property to allow her the opportunity to further engage with the local authority and to seek alternative accommodation. Ms. Brown, on behalf of the Applicant, did not oppose the Tribunal's proposal to allow the Respondent a period of 3 months to remove from the Property. Accordingly, the Tribunal have determined that the order for possession should not be executed prior to 12 noon on 19th July 2024.

Decision

The order for possession is granted – not to be executed prior to 12 noon on 19th July 2024.

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.



Andrew Cowan

Legal Member/Chair

12th April 2024

Date