



**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/23/3631

**Re: Property at Broomhill Farmhouse, Forteviot, Perth, PH2 9BU (“the
Property”)**

Parties:

**Mr Willie Drummond, Nether Spittalton Byre, Blairdrummond, Stirling, FK9 4XD
 (“the Applicant”)**

**Mr Joe Geraghty and Avril Geraghty, Broomhill Farmhouse, Forteviot, Perth,
PH2 9BU (“the Respondent”)**

Tribunal Members:

Melanie Barbour (Legal Member) and Angus Lamont (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that it should grant an order for recovery of possession;
but shall suspend the execution of the Order for a period of three months from
the date of the Order**

Background

1. An application was received under rule 66 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession of the property under a short assured tenancy granted by the Applicants to the Respondents.
2. The application contained :-

- a. A copy of the tenancy agreement,
 - b. a copy of the AT5,
 - c. a copy of the Section 33 Notice,
 - d. a copy of the Notice to Quit,
 - e. evidence of service,
 - f. Section 11 Notice, and
 - g. Rent statement
3. The case had called for a case management discussion on 26 March 2024. Appearing were the Applicant, his agent, Mr Grant of Wright, Johnston and Mackenzie LLP (with Mr Black, Trainee Solicitor, observing) and Mr Wesley Geraghty who appeared for all three Respondents.
4. On 3 March 2024 the respondents had lodged a letter explaining that there had been issues with the tenancy in terms of heating, mould and dampness. The landlord had been given time but had not attended to the repairs. It stated that it had led to the respondents paying for repairs to the property, this was particularly so given the health conditions of his parents. Further, it advised that Wesley Geraghty had now left the property with his son. His parents, the other two respondents, were waiting to be re-housed by Perth and Kinross Council. His father had dementia and mobility issues and therefore it was taking a bit longer to secure appropriate accommodation for his parents. The letter advised that his parents required to stay in the property until they were rehoused. The applicant's agent confirmed that he had had sight of this letter.
5. The applicant's agent had submitted further documents on 13 March 2024 in relation to the application. The respondent confirmed that he had received these papers.

Case Management Discussion

6. The Applicants' agent advised that he was asking for a hearing to be fixed for both cases. His client was seeking orders for eviction and payment, but given

the letter submitted by the respondent he was not moving for eviction or payment today. He advised that the arrears had increased significantly since case was first raised, and given this, he was seeking a hearing as soon as possible. He intended to provide updated rent statements prior to the hearing.

7. He advised that he was not clear what the basis of the respondent's opposition was. He noted that they were submitting that they had spent money on the property, but he was not clear if they were arguing that they were due to be recompensed for these costs or, did this mean that the landlord was not entitled to his order for eviction due to these payments.
8. He advised that the current arrears were now £12,548.23.
9. Mr Wesley Geraghty advised that he had now moved out of the property. He had moved into local authority accommodation with his son. He advised that his parents were waiting to be rehoused. They had an application with the local council for a house. They already had a lot of priority points. Finding a house for his parents had been rather tricky as his father had additional care needs due to mobility issues and his dementia. He was working with the housing department to try and get his parent accommodation sorted out.
10. He confirmed the respondents were not opposing the application for eviction, but given his parents' housing situation, he asked that the eviction be postponed.
11. He was in touch with the housing team, they had not advised him to let them know what happened at today's case management discussion. He advised that the housing department had not discussed with him whether his parents would be prioritised if an eviction order was granted, but they were aware of today's case management discussion. Mr Geraghty advised that his parents were both 79 years of age.
12. The applicant's agent advised that he was obliged to Mr Geraghty confirming that the respondents were not opposing the order for eviction, he suggested

that subject to taking instructions, that an order for eviction could be granted with a three month period before it could be enforced.

13. The agent confirmed that given Mr Wesley Geraghty had now moved out he was only seeking an order for eviction against Joe Geraghty and Avril Geraghty.
14. The case management discussion was adjourned for 10 minutes for the applicant's agent to seek instructions. When the case recalled the applicant's agent confirmed that they were content for an order for eviction to be granted with a condition that the order for eviction be suspended for 3 months. The respondent advised that he had contacted his mother and she had confirmed that she was happy for an order to be granted on that basis too.

Findings in Fact

15. We found the following facts established:-
16. That there was in place a short assured tenancy.
17. That there was a tenancy agreement between the Applicants and the Respondents in respect of the Property.
18. The tenancy commenced on 3 March 2014 for an initial period of 6 months.
19. The AT5 Form was in the prescribed format and was dated 3 March 2014.
20. The notice to quit and section 33 notices contained the prescribed information, and both were dated 10 July 2023, both sought vacant possession as of 15 September 2023. Both provided more than 2 months' notice that vacant possession was sought. There was evidence of service of the notices. The notice to quit terminated the tenancy on an *ish* date.
21. There was a section 11 notice addressed to the local authority.

22. The respondents did not oppose the order being granted subject to it not being enforced for three months, to allow them time to secure accommodation with the local authority. The respondents were both 79. The male respondent had mobility issues and dementia.

Reasons for Decision

23. Section 33 of the 1988 Act requires the tribunal to grant an order for possession under a short assured tenancy where: the tenancy has reached its end; tacit relocation is not operating; no further contractual tenancy for the time being is in existence; the landlord has given notice to the tenant that they require possession of the house; and where it is reasonable to do so.

24. We were satisfied that a short assured tenancy had been created. We were satisfied with the terms of the section 33 notice and the notice to quit. We were also satisfied that these notices had been served on the Respondents. We also noted that a section 11 notice has been sent to the local authority.

25. Having regard to the question of reasonableness, the Respondents did not object to the order being granted. They had applied for housing with the local council. They had already been given priority points for their situation and health conditions. In view of the health condition of the male respondent in relation to his mobility and his dementia finding suitable accommodation for the couple had taken a bit longer. The respondents thought a period of 3 months should be long enough to allow them to secure appropriate accommodation. We place weight on the Respondents' position in deciding if it is reasonable to grant the Order. Given all of this information, we consider that it would be reasonable to grant an Order for eviction subject to it not being enforced for three months.

26. Accordingly, we would confirm that we are satisfied that all of the requirements of section 33 had been met and that it would be reasonable to grant an order for eviction under section 33 of the Housing (Scotland) Act 1988.

Decision

27. We grant an order in favour of the Applicant against the Respondents for recovery of possession of 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.

Melanie Barbour

26/03/2024

Legal Member/Chair

Date