



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 Housing (Scotland) Act 1988 (“the 1988 Act”)

Chamber Ref: FTS/HPC/EV/23/3602

Property at 146 Monklands Avenue, Kirkintilloch, Glasgow, G66 3BS (“the Property”)

Parties:

Cameron Johnstone, 85 Mid Barrwood Road, Kilsyth; Jennifer Walls, 1A Bothlin Court, Lenzie (“the Applicants”)

Mr David McErlane, 12 Monieburgh Road, Kilsyth, G65 0JB; Ms Lisa McErlane, 146 Monklands Avenue, Kirkintilloch, Glasgow, G66 3BS (“the Respondents”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Leslie Forrest (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondent in favour of the Applicants.

Background

1. The Applicants seek an order for possession in terms of Section 33 of the 1988 Act. A tenancy agreement, AT5 Notices, a Notice to Quit, Section 33 notice, Sheriff Officer certificates of service and Section 11 Notice were lodged with the application.
2. A copy of the application was served on the Respondents by Sheriff Officer at the property. Both parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 22 April 2024 and that they were required to participate. Prior to the CMD the second Respondent notified the Tribunal that the first Respondent had moved out of the property in 2020 as they had separated.

3. The CMD took place on 22 April 2024. The Applicants were represented by Ms Walls. The first Respondent joined the call late, just to confirm that he had moved out of the property in 2020 and that he did not oppose the application. The second Respondent participated.

The Case Management Discussion

4. Following discussion with Ms Walls, the Tribunal obtained an updated copy of the Title sheet and allowed the names of the Applicant to be amended to Cameron Johnstone and Jennifer Walls, two of the current owners of the property.
5. The Tribunal noted that the Sheriff Officers had only served the application at the property. Mr McErlane joined the call late and provided his current address. He confirmed that he was aware of the application and did not oppose the order being granted.
6. Ms McErlane told the Tribunal that she does not oppose the order for possession. She has been on the East Dunbartonshire homeless list for over 2 years and has been told that she is well placed to receive an offer. Her preference is to obtain accommodation in the social rented sector, and she is keen to move as soon as possible. She stated that she resides at the property with her son aged 7 and daughter who is 9. Her daughter has been referred to CAMHS for a possible ADHD diagnosis and she has been told that this will make her eligible for a three bedroom property. She needs this anyway as her daughter is almost 10. She has advised the Council of the application and has been placed on the list for temporary accommodation. In response to questions from the Tribunal, Ms McErlane said that a delay in enforcement of the order would be preferable, but if she must move to temporary accommodation in the near future then she would accept that.
7. Ms Walls told the Tribunal that she is seeking an order for possession as she requires the property back to live in it. She has significant financial problems including rent and Council tax arrears and her business is struggling. She and her partner wish to move into the property as soon as possible as they are going to become homeless. For this reason, she would oppose a delay in enforcement.

Findings in Fact

8. The Respondents are the tenants of the property in terms of a short assured tenancy agreement.
9. The Applicants served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondents on 4 July 2023.
10. The first Respondent moved out of the property in 2020 and has a new tenancy in Kilsyth.

11. The second Respondent resides at the property with two children aged 9 and 7.
12. The second Respondent has applied to the Local Authority for housing and would prefer to have accommodation in the social rented sector. She cannot afford to continue to rent in the private sector.
13. The Applicants require to recover possession of the property so that the second Applicant and her partner can live in the property, due to financial hardship and debt.

Reasons for Decision

14. The application was submitted with a short assured tenancy agreement and AT5 Notice. The initial term of the tenancy was 23 September 2012 until 23 September 2013.
15. Section 32 of the 1988 Act states “(1) A short assured tenancy is an assured tenancy - (a) which is for a term of not less than 6 months; and (b) in respect of which a notice is served as mentioned in subsection (2) below. (2) The notice referred to in subsection (1)(b) above is on which – (a) is in such form as may be prescribed; (b) is served before the creation of the short assured tenancy; (c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under the tenancy; and (d) states that the assured tenancy to which it relates is to be a short assured tenancy.”
16. The Tribunal is satisfied that the tenancy agreement between the parties was for an initial term of 12 months and therefore meets the requirements of Section 32(1) of the 1988 Act. The Tribunal is also satisfied that an AT5 Notice was given to the Respondents prior to the creation of the tenancy. In the circumstances, the Tribunal determines that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act.
17. From the documents submitted with the application, the Tribunal is satisfied that the Applicants served a Notice to Quit and Section 33 Notice on the Respondent on 4 July 2023. The Notice to Quit called upon the Respondents to vacate the property on 23 September 2023, an ish date. The Notice contains the information prescribed by the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and complies with the terms of Section 112 of the Rent (Scotland) Act 1984. The Tribunal is satisfied that the Notice to Quit is valid and that the tenancy contract has been terminated. The Section 33 Notice was also served on 4 July 2023 and gave the Respondent 2 months notice that the Landlord wished to recover possession of the property. A Section 11 Notice was submitted with the application, with evidence that it was sent to the Local Authority. The Applicants

have therefore complied with Section 19A of the 1988 Act.

18. Section 33 of the 1988 Act, (as amended by the Coronavirus (Recovery and Reform) (Scotland) Act 2022) states “(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied – (a) that the short assured tenancy has reached its finish; (b) that tacit relocation is not operating; (d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and (e) that it is reasonable to make an order for possession” Subsection 2 states “The period of notice to be given under subsection (1)(d) above shall be – (1) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period; (ii) in any other case, two months”. The Tribunal is satisfied that the tenancy has reached its finish and, as the Applicant has served a valid Notice to Quit, that tacit relocation is not operating. A valid notice in terms of section 33(d) has also been served on the Respondents, giving at least two months’ notice that the Applicant required possession of the property.
19. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession, in terms of Section 33(e) of the 1988 Act.
20. The Tribunal had regard to the following: -
 - (a) The first Respondent does not oppose the application as he has not resided at the property for 4 years and has his own tenancy elsewhere.
 - (b) The first Respondent would prefer to rent in the social rented sector and is on a waiting list with the Local Authority. She has been advised that she is well placed to receive an offer of a three bedroom property.
 - (c) The Applicants require the property so that the second Applicant and her partner can reside there. They have incurred rent arrears and Council tax arrears at their current rented property due to financial problems.
21. For the reasons specified, the Tribunal is satisfied that it would be reasonable to grant the application.
22. The Tribunal is satisfied that the Applicant has complied with the provisions of the 1988 Act and that it would be reasonable to grant the order. The Tribunal then considered whether to order a delay in execution of the order for possession in terms of Rule 16A of the Procedure Rules. The Tribunal noted that this is opposed by the Applicants, due to pressing financial difficulties. The second Respondent indicated that a delay might be preferable as it might mean that she does not have to move into temporary accommodation. The Tribunal noted that the Respondent’s children are of primary school age and that a delay to 1 July 2024, when the school holidays are underway, could minimise disruption to the family. The Tribunal is therefore satisfied that they should order

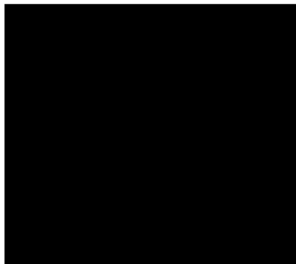
a delay in execution to 1 July 2024. However, parties should note that they are free to agree an earlier or later date if they choose to do so.

Decision

23. The Tribunal determines that an order for possession of the property should be granted against the Respondents.

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.



Legal Member

22 April 2024