



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/24/0069

Re: Property at 92 Mid Street, Bathgate, West Lothian, EH48 1QD (“the Property”)

Parties:

Susan Russell, 9 Braeside Park, Mid Calder, Livingston, West Lothian, EH53 0SL (“the Applicant”)

Donna Krendler, 92 Mid Street, Bathgate, West Lothian, EH48 1QD (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Janine Green (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

1. This is an application by the Applicant for an order for possession on termination of a short assured tenancy in terms of rule 66 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended* (“the Rules”). The tenancy in question was a Short Assured Tenancy of the Property by the Applicant to the Respondent commencing on 21 November 2017. The copy application was dated 5 January 2024 and lodged with the Tribunal on that date.
2. The application relied upon a Notice to Quit and notice in terms of section 33 of the *Housing (Scotland) Act 1988*, both dated 25 September 2023, providing the Respondent with notice (respectively) that the Applicant sought to terminate the Short Assured Tenancy and have the Respondent vacate, each by 22 December 2023. Evidence of service of the said notices by Sheriff Officer service on 27 September 2023 was included with the application.

3. Evidence of a section 11 notice dated 5 January 2024 of the *Homelessness Etc. (Scotland) Act 2003* served upon West Lothian Council was provided with the application.

The Hearing

4. On 10 May 2024 at 14:00, at a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting remotely by telephone conference call, we were addressed by the parties. The Applicant was supported by her husband, but Mr Russell made no submissions prior to us delivering the oral version of this Decision.
5. We sought clarification from the Respondent as to whether the application was opposed. She explained that it was not. She said she had, after many months of seeking both rented accommodation and placing offers to purchase, had an offer to purchase a flat accepted. This was on 29 April 2024 and the legal papers were now to be concluded, but she had a mortgage offer and was advised that could settle by 20 June 2024, if not sooner. She thus did not oppose the order, and was making arrangements to leave, but was concerned about temporary homelessness if she was not able to purchase and move prior to the date of eviction. She stressed that she believed the purchase process would be swift, but said she wished to be open with the possibility that it may take until 20 June 2024.
6. We asked the Applicant for her position, in consideration that the earliest date that any order for eviction could be executed would be 12:00 on 10 June 2024 by our calculation. She gave powerful submissions that, as matters stood, every day was significant to her as she was under significant stress by issues which would be resolved in part by regaining possession of the Property. She was suffering health issues as a result. The context of the stress was explained in the Applicant’s application, which she expanded on in oral submissions. The Applicant and her husband had separated but required to remain under the same roof due to a lack of any alternative accommodation for Mr Russell. His income was such that he was not financially able to obtain alternative accommodation and they saw their only option for moving on with their lives to involve him moving into the Property (which was close to friends, family, and his work). The Applicant did not know the long-term outcome but thought that either Mr Russell would take title to the Property as part of their divorce settlement, or it would be sold as part of the arrangements to give effect to their divorce settlement. We noted that the notices had originally expired on 22 December 2023. Thus the Applicant and her husband’s plans had been on hold since September 2023, including over four further months since expiry of the notices. The Applicant explained that she and her husband’s divorce was now proceeding. Her distress at the continued state of limbo was obvious from her oral submissions. (Mr Russell, when he spoke briefly at the end of the conference call, was similarly distressed.)
7. The Respondent expressed her sympathy for the situation but explained that she had no other options for housing, except possibly obtaining expensive short term hotel accommodation, or – if rendered homeless by an eviction – being rehoused by the local authority. The latter option would likely also mean hotel

accommodation, as she had been advised that she ranked too low for better accommodation (as she was a single person household). The Respondent said that she had also found it stressful to have the uncertainty of seeking new accommodation. She explained that she had been looking to leave the Property for some significant time, but had been unable to obtain private sector or public sector accommodation that was suitable for her. She said that she had put in 7 offers to purchase before being successful with her current offer on 29 April 2024. She said that she did not drive, and relied on a lift from her manager who lived close to the Property (and close to the flat she was now buying). She was concerned as to how she would reach her work if she needed to live in temporary hotel accommodation if evicted before her purchase concluded.

8. In regard to further issues related to reasonableness, the following were agreed (or not disputed):
 - a. The Respondent lived alone and was in employment.
 - b. The Respondent intended to pay rent for the Property through to 20 June 2024.
 - c. The Property was a ground floor flat in a two-storey block of 16 flats.
 - d. The Property was a one-bedroom property, with no special adaptations for the Respondent's use.
 - e. The Property was especially suitable for both the Applicant's husband and the Respondent for the reasons of access to their places of work (as set out above).
9. No order for expenses was sought.

Findings in Fact

10. By written lease dated 21 November 2017, the Applicant let the Property to the Respondent by lease with a start date of 21 November 2017 until 22 May 2018 to "continue thereafter on a monthly basis until terminated by either party" ("the Tenancy").
11. The Tenancy was a Short Assured Tenancy in terms of the *Housing (Scotland) Act 1988* further to the Applicant issuing the Respondent with a notice under section 32 of the 1988 Act (an "AT5") on 14 November 2017, prior to commencement of the Tenancy.
12. On 25 September 2023, the Applicant drafted a Notice to Quit in correct form addressed to the Respondent, giving the Respondent notice that the Applicant wished her to quit the Property by 22 December 2023.
13. On 25 September 2023, the Applicant drafted a Section 33 Notice under the 1988 Act addressed to the Respondent, giving the Respondent notice that the Applicant required possession of the Property by 22 December 2023.
14. 22 December 2023 is an ish date of the Tenancy.
15. On 27 September 2023, a Sheriff Officer acting for the Applicant competently served each of the notices upon the Respondent. The Respondent was thus

provided with sufficient notice of the Applicant's intention that the Tenancy was to terminate on 22 December 2023.

16. On 5 January 2024, the notice period under the notices having expired, the Applicant raised proceedings for an order for possession with the Tribunal, under rule 66, the grounds of which being: that the Tenancy had reached its end; that tacit relocation was not operating; that no further contractual tenancy was in existence; that notice had been provided that the Applicant required possession of the Property all in terms of section 33 of the 1988 Act; and that it was reasonable to make the order.
17. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon West Lothian Council on 5 January 2024 by the Applicant.
18. On 8 April 2024, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondent, providing the Respondent with sufficient notice of the CMD of 10 May 2024.
19. The Applicant is divorcing her husband, and she and her husband wish her husband to move into the Property as part of their separation and divorce.
20. The Applicant and her husband are currently separated but require to live in the same property. This is contributing to the significant stress being experienced by the Applicant, which is further affecting her health.
21. The Respondent has sought to be rehoused for a number of months, and was unable to find and secure any suitable accommodation on the private or public rented market, or the purchased market. She was unsuccessful in a number of bids to purchase other properties.
22. On 29 April 2024, the Respondent was successful in bidding to purchase a flat and has a mortgage offer in place to complete. She is advised by her solicitor that the sale process should be short but may take until 20 June 2024.
23. The Respondent has been advised that, if made homeless through eviction, she would be unlikely to receive any homeless accommodation other than in a hotel with no guarantee where the hotel might be located.
24. The Respondent does not drive and is reliant on a colleague to drive her to her work. The colleague is local both to the Property and to the flat the Respondent has offered to purchase.
25. The Respondent is uncertain of her ability to attend work if in temporary accommodation away from her colleague's route driving to work.

Reasons for Decision

26. The application was in terms of rule 66, being an order for possession upon termination of a short assured tenancy. We were satisfied on the basis of the application and supporting papers that the necessary notices had been served with sufficient notice, the Respondent was extending no defence or dispute to the notices, and thus the requirements of the 1988 Act had been complied with.
27. We require, in terms of the 1988 Act as currently amended, to consider “that it is reasonable to make an order for possession”. On this, the Respondent offered no opposition except to seek a short suspension of the order to evict (from 10 June 2024 to 20 June 2024).
28. In regard to reasonableness generally, we were satisfied that the Applicant’s reasons for seeking eviction were reasonable and, given the Respondent’s active steps to purchase a new home, it was reasonable to evict.
29. The contentious issue was solely restricted to whether there should be an extra 10 days of suspension, which the Respondent hoped she would not even require. The decision was a difficult one despite the short time period to be considered. We were satisfied that the distress of the Applicant (and her husband) were genuine and significant. We accepted that they felt that even an extra ten days delay to the restructuring of their lives was a matter that weighed heavily, especially as they had been planning towards this restructuring (but unable to advance it) since September 2023. Nonetheless, the suspension requested should ensure that no one was made homeless nor required temporary accommodation. Further, it avoided the Respondent requiring to move twice in a short period. Finally, refusal of the suspension did not resolve matters for the Applicant. She would still need to incur more cost (and potentially stress) in seeking to instruct eviction the Respondent, all of which may not conclude before (or sufficiently before) 20 June 2024.
30. We would further add, and this is not meant to be a criticism of the Applicant’s actions, that far more than 10 days of delay may have already arisen through minor steps and circumstances earlier in the case which the Applicant could potentially have avoided. Had the notices been prepared and served 6 days earlier, they could have been drafted to seek to terminate the lease by 22 November 2023. Further, the application was sent to the Tribunal 14 days after the first possible date for lodging. We did not enquire as the circumstances that led to the notices being drafted on 25 September (rather than shortly before), and we appreciate that the notices expired just before the winter holiday period and it may have made little difference if they had been lodged on 23 December 2023. These delays may be unfortunate and unavoidable, or immaterial, but we think they place in context the brief suspension sought.
31. The Rules allow at rule 17(4) for a decision to be made at a CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to consider the order at this time. In all the circumstances before us, and particularly considering the Respondent’s position, we were thus satisfied

that it was reasonable to grant the application with the order suspended to 12:00 on 20 June 2024.

Decision

32. In all the circumstances, we make the decision to grant an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988 suspended as stated above.

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.

Joel Conn

10 May 2024

Legal Member/Chair

Date