



**(Housing and Property Chamber) under Section 33 of the Housing (Scotland) Act 1988**

**Chamber Ref: FTS/HPC/EV/24/0550**

**Re: Property at 23 Afton Avenue, Mossblown, Ayr, KA6 5DY ("the Property")**

**Parties:**

**Ms Jean Munro, 83 Auchencrieff Road North, Locharbriggs, Dumfries, DG1 1UZ ("the Applicant")**

**Ms Caroline Loughlin, 23 Afton Avenue, Mossblown, Ayr, KA6 5DY ("the Respondent")**

**Tribunal Members:**

**Gillian Buchanan (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision (in absence of the Respondent)**

At the Case Management Discussion ("CMD"), which took place by telephone conference on 23 May 2024, the Applicant was not in attendance but was represented by Ms Lauren Dalgleish of Walker & Sharpe, Dumfries. The Respondent was neither present nor represented.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") had been satisfied relative to the Respondent having received notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29.

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that:-**

**Background**

The Tribunal noted the following background:-

- i. The Applicant and her ex-husband leased the Property to the Respondent in terms of a Short Assured Tenancy Agreement ("the SAT") that commenced on 5 February 2008.
- ii. The Applicant is now in right of the Landlord's entire interest in the SAT.
- iii. The initial term of the SAT was agreed to be from 5 February 2008 to 4 August 2008 and thereafter the SAT has continued on a 2 monthly basis.
- iv. On 2 June 2023, the Applicant served on the Respondent by Sheriff Officers a Notice to Quit and a Notice under Section 33 of the Housing (Scotland) Act 1988

- ("the 1988 Act") both dated 24 May 2023 requiring the Respondent remove from the Property by 4 August 2023.
- v. By email dated 31 January 2024 the Applicant served on South Ayrshire Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
  - vi. The application is dated 1 February 2024.

### **The CMD**

At the CMD the Applicant's representative made the following additional oral representations:-

- i. In around October 2023 the Respondent contacted the Applicant directly and also contacted the Applicant's representative's office expressing an interest in purchasing the Property from the Applicant. The Applicant was willing to consider selling the Property to the Respondent and the present application was delayed to allow the Respondent to make a formal offer. No offer was forthcoming and there was no further contact from the Respondent.
- ii. It is not known how the Respondent would have funded a purchase of the Property.
- iii. The Respondent lives alone in the Property. She is not believed to be in employment.
- iv. The Respondent would be regarded as a vulnerable adult. She is receiving support from the local authority but no guardianship order is in place.
- v. The Applicant is in frequent contact with the local authority and that has been the position for some time. Indeed the Applicant made the local authority aware that Notices to Quit the Property were being served before doing so.
- vi. The local authority recently informed the Applicant that the Respondent would be undergoing a further psychiatric assessment. Her mental health is believed to have declined such that she may no longer be able to live in the Property.
- vii. The Applicant never intended to have sole ownership of the Property and never intended to be a landlord. The Applicant's representative adopted the terms of the Applicant's statement dated 17 April 2024.
- viii. The Respondent is in arrears of rent. The precise rent arrears outstanding are not known. The Applicant has no intention of pursuing the arrears.
- ix. The Applicant seeks an eviction order.

### **Findings in Fact**

The Tribunal made the following findings in fact:-

- i. The Applicant and her ex-husband leased the Property to the Respondent in terms of the SAT which commenced on 5 February 2008.
- ii. The Applicant is now in right of the Landlord's entire interest in the SAT.
- iii. The initial term of the SAT was agreed to be from 5 February 2008 to 4 August 2008 and thereafter the SAT has continued on a 2 monthly basis.
- iv. On 2 June 2023, the Applicant served on the Respondent by Sheriff Officers a Notice to Quit and a Notice under Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") both dated 24 May 2023 requiring the Respondent remove from the Property by 4 August 2023.
- v. The Respondent continues to live in the Property.
- vi. By email dated 31 January 2024 the Applicant served on South Ayrshire Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- vii. In around October 2023 the Respondent contacted the Applicant directly and also contacted the Applicant's representative's office expressing an interest in purchasing the Property from the Applicant. The Applicant was willing to consider

- selling the Property to the Respondent and the present application was delayed to allow the Respondent to make a formal offer. No offer was forthcoming and there was no further contact from the Respondent.
- viii. The Applicant made the local authority aware that Notices to Quit the Property were being served on the Respondent before doing so.
  - ix. The Applicant never intended to have sole ownership of the Property and never intended to be a landlord. She took outright ownership of the Property to finalise her previous divorce.
  - x. The Respondent is in arrears of rent.
  - xi. The Applicant has remarried and wishes to sell the Property to allow her to organise her circumstances and affairs to achieve financial independence.

### **Reasons for Decision**

The Respondent did not submit any representations to the Tribunal and did not attend or have representation at the CMD. The factual background narrated by the Applicant within the application papers and on her behalf orally at the CMD was not challenged and was therefore accepted by the Tribunal.

The Tribunal considered whether to grant an eviction order under Section 33 of the 1988 Act.

Section 33(1) states:-

*"Recovery of possession on termination of a short assured tenancy.*

*(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 ish;*

*(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."*

The tribunal was satisfied that the SAT had reached its ish as at 4 August 2023 and that, having regard to the terms of the SAT, tacit relocation is not operating.

The tribunal was satisfied that the Applicant had given proper notice to the tenant that she requires possession of the Property having regard to the terms of Section 33(2).

The tribunal considered carefully whether it would be reasonable to grant an eviction order.

Whilst it was suggested that the Respondent might well be a vulnerable adult she appears to have support from the local authority and the Applicant had made the local authority aware of her intention to serve Notices to recover possession of the Property before the Notices were served. The Applicant had delayed making the application to give the Respondent the opportunity to make an offer to purchase the Property which was not

forthcoming. A Notice had also been served on the local authority under Section 11 of the Homelessness etc (Scotland) Act 2003 and therefore, again, it had intimation of the Applicant's intention to pursue an eviction order.

The Applicant had submitted a detailed statement of her circumstances, past and present, and explaining the reasons she wishes to recover possession of the Property. She has remarried and wishes to sell the Property to allow her to organise her circumstances and affairs to achieve financial independence. She was, in many ways, an unintentional landlord and took outright ownership of the Property to finalise her previous divorce.

Having regard to all the circumstances the tribunal therefore determined that it is reasonable to grant an eviction order.

### **Decision**

The Tribunal granted an eviction order in favour of the Applicant.

### **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.**

Gillian Buchanan

Legal Member/Chair

\_\_\_\_\_ 23 May 2024  
Date