



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/24/0089

Re: Property at 11 Tayside Place, Aberfeldy, PH15 2AW (“the Property”)

Parties:

Kathleen Flora Spence, Oakview, Market Street, Aberfeldy, PH15 2AN (“the Applicant”)

Stanislav Oles, 11 Tayside Place, Aberfeldy, PH15 2AW (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Ann Moore (Ordinary Member)

Decision

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

Background

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’s late wife Malgorvata Oles commencing on 1 December 2012. Correspondence lodged with the application showed that the Respondent took over the Tenancy subsequent to Mrs Oles’ passing on 2 February 2017. The copy application was dated 8 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 15 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 1 December 2023. Evidence of service of the said notices by recorded delivery post on 15

September 2023 (and evidence of them signed for on 18 September 2023) was included with the application.

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

The Hearing

4. On 16 May 2024 at 10:00, 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 Applicant’s solicitor, Lauren Alexander-Smith, Macnabs, and by the Respondent himself. The Respondent was assisted by his daughter Magda Oles who acted, where necessary, as his translator.
5. We sought clarification from the Applicant’s agent as to whether the application was insisted upon, and from Respondent as to whether the application was opposed. The Applicant’s agent confirmed that the application was still insisted upon, but that she understood the Respondent to have an offer of new accommodation from the local authority.
6. The Respondent, principally through his daughter, confirmed that did not oppose the application and that he had received an offer of rehousing on 6 May 2024. He expected to be given keys within 2 to 4 weeks, once some works had been carried out at the new property. Through his daughter it was explained that he had been seeking new accommodation (including rental of a single room in shared accommodation) since September 2023 but, due to the size of Aberfeldy, he had not found anything until now. He was a 64 year old man with limited English, who was still working with a job in Aberfeldy. His daughter lived in the town. He wished to stay in the town. We confirmed with the Respondent (both through his daughter and direct from him) that he understood the consequences of not opposing the eviction, and that he positively sought to leave the Property so as to move into a new home. This was confirmed to us. The Respondent summarised matters as saying that the new one-bedroom property he has been offered was “enough for me” and he appeared positive about the move to new accommodation.
7. In regard to further details on the merits of the application, the Applicant’s agent confirmed that the Property was one of two properties owned for let by the Applicant, and that she was seeking to end the tenancies of both. It was explained that the Applicant was suffering from ill-health and she wished to cease being a landlord. The Applicant’s agent understood that the Applicant wished to move into the Property and then subsequent sell it, but was not able to explain further the context of that plan (nor whether the Applicant owned or let her current home address). The Applicant’s agent confirmed there were no arrears or other breaches of the Tenancy by the Respondent.
8. Parties were agreed that the Property was a two-bedroom property, that the Respondent lived there alone, and that the Property was not adapted for his use

nor specially suitable for his needs (though we noted that its location in Aberfeldy – where accommodation was limited – was most suitable for his work and family life).

9. No order for expenses was sought.

Findings in Fact

10. By written lease dated 30 November 2012, the Applicant let the Property to the Respondent's late wife, Malgorvata Oles, by lease with a start date of 1 December 2012 until 1 December 2012 and then "thereafter on a monthly basis" ("the Tenancy").
11. The Tenancy was a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988 further to the Applicant issuing Malgorvata Oles with a notice under section 32 of the 1988 Act (an "AT5") on 27 November 2012, prior to commencement of the Tenancy.
12. Malgorvata Oles passed away on 2 February 2017.
13. The Respondent continued to reside at the Property after his wife's death.
14. On 19 May 2017, the Respondent corresponded with the Applicant to confirm that he sought his right of succession to the Tenancy.
15. The Applicant accepted the Respondent's succession to the Tenancy.
16. On 15 September 2023, the Applicant's agent drafted a Notice to Quit in correct form addressed to the Respondent, giving the Respondent notice that the Applicant wished him to quit the Property by 1 December 2023.
17. On 15 September 2023, the Applicant's agent 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 1 December 2023.
18. 1 December 2023 is an ish date of the Tenancy.
19. On 15 September 2023, the Applicant's agent served each of the notices upon the Respondent by recorded delivery. The Respondent was thus provided with sufficient notice of the Applicant's intention that the Tenancy was to terminate on 1 December 2023.
20. On or around 8 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 ish; 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.

21. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon Perth & Kinross Council on or around 5 January 2024 on the Applicant's behalf.
22. The Applicant seeks to terminate the Tenancy so as to cease being a landlord, due to her own ill-health.
23. The Property has two-bedrooms.
24. The Respondent is 64 years old, and is in employment. The Respondent lives in the Property alone.
25. The Respondent has made arrangements to obtain alternative accommodation, with an expected date of entry by 14 June 2024.

Reasons for Decision

26. The application was in terms of rule 66, being an order for possession upon termination of a short assured tenancy.
27. In regard to the right of succession to the Tenancy, the terms of section 31 of the 1988 Act state:
 - (1) *In any case where—*
 - (a) *the sole tenant under an assured tenancy dies; and*
 - (b) *immediately before the death the tenant's spouse or civil partner was occupying the house as his or her only or principal home; and*
 - (c) *the tenant was not himself a successor as explained in subsection (2) or (3) below,*
the tenant's spouse or civil partner shall, as from the death and for so long as he or she retains possession of the house without being entitled to do so under a contractual tenancy, be entitled to a statutory assured tenancy of the house.

The late Mrs Oles was not a successor to the Tenancy, and there was no dispute as to the succession. We were satisfied that the Respondent succeeded to the Tenancy of the Property in a normal fashion.

28. On that basis, 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.
29. 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. He hoped to leave the Property voluntarily in early course. We were satisfied that the Applicant's reasons for seeking eviction were reasonable

and it was reasonable to evict. In the circumstances before us, and particularly considering the Respondent's position, we were thus satisfied that it was reasonable to grant the application.

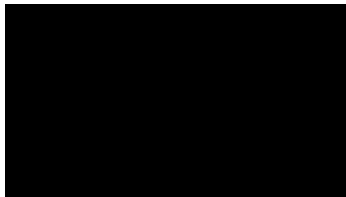
30. The Rules allow at rule 17(4) for a decision to be made at a CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time.

Decision

31. 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.

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.



16 May 2024

Legal Member/Chair

Date