



**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/24/0453**

**Re: Property at 41 Leven Street, Motherwell, ML1 2SY (“the Property”)**

**Parties:**

**Stoneville Investments Limited, 62 Main Street, Oakham, Rutland, LE15 9LT (“the Applicant”)**

**Ms Carole McNeil, 41 Leven Street, Motherwell, ML1 2SY (“the Respondent”)**

**Tribunal Members:**

**Mary-Claire Kelly (Legal Member) and Elizabeth Williams (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for eviction. The Tribunal further determined that the order shall not be executed prior to 1<sup>st</sup> August 2024**

**Background**

1. By application dated 4<sup>th</sup> January 2024 the applicant seeks an order for eviction, relying on section 33 of the Housing (Scotland) Act 1988.
2. The applicant lodged the following documents with the application:
  - Copy tenancy agreement
  - Notice to quit with proof of service
  - Section 33 notice with proof of service
  - Letter from estate agent re sale of the property
  - Form AT5

- Notice under section 11 of the Homelessness Etc. (Scotland) Act 2003

### **Case management discussion – teleconference – 20<sup>th</sup> May 2024**

1. The applicant was represented by Ms McCaughey, Lettings Manager from Clyde Valley Lets. The respondent was represented by her husband Alan Brookbanks.
2. Both parties accepted that the property had been let under a Short Assured Tenancy and that proper notices had been served. Accordingly a ground for recovery of possession in terms of section 33 was established and the Tribunal heard from parties in relation to the reasonableness of an order being granted.
3. Ms McCaughey stated that the respondent had been fantastic tenants and there was no issue with their conduct. She explained that the applicant had decided to sell a number of rental properties as it was no longer profitable for from a business point of view to operate as a landlord. This had been caused by increasing mortgage rates and other cost associated with being a landlord such as the cost of repairs. Ms Mc Caughey had been trying to assist with finding a new property for the respondents but had been unsuccessful. This was due to a lack of availability of private rented property in the area but also the respondents household comprised 5 adults which meant that most properties would be unsuitable.
4. Mr Brookbanks explained that he lived with his wife and their 3 children aged 21, 22 and 24. The household had income from Mr Brookbanks and his wife and the 2 older children. Mr Brookbanks advised that they had applied to the local authority for housing. They had been made 2 offers of accommodation however had turned these down as they were not in suitable areas. They had reapplied but did not know how long it might take to receive another offer. Mr Brookbanks advised that the family had been looking for private rented accommodation as well however had not had any success as such. Mr Brookbanks explained that both he and his wife suffered from chronic medical conditions.
5. During the course of the discussion Mr Brookbanks indicated that he did not seek to oppose an order for eviction however, he sought more time to allow the family to source alternative accommodation and plan their move from the

property. He advised that ideally he would seek 2 months prior to the property being repossessed.

6. Ms McCaughey advised that in her view the landlord would not object to an extension of 2 months prior to eviction.

### **Findings in fact**

7. Parties entered into a Short Assured Tenancy agreement with a commencement date of 20<sup>th</sup> January 2014.
8. The monthly rent due is £595.
9. A section 33 notice and a notice to quit was served on 25<sup>th</sup> October 2023 specifying the 20<sup>th</sup> January 2024 as the date the respondent required to leave the property.
10. It is reasonable to grant an order for eviction.
11. It is reasonable to extend the period prior to executing the order until 22<sup>nd</sup> July 2024.

### **Reasons for the decision**

12. The Tribunal had regard to the application and the documents lodged by the applicant. The Tribunal also took into account oral submissions at the cmd.
13. The Tribunal was satisfied that the tenancy was a short assured tenancy taking into account the representations of parties and the lease and tenant information pack which had been lodged in which the respondent acknowledged receipt of an AT5.
14. The Tribunal gave weight to the fact that the respondent did not seek to defend the action. In relation to the decision to allow an extension to the period before the eviction charge is executed the Tribunal took into account that the extension of 2 months was relatively short. There was not issue with increasing arrears or other threat to the property during that time. The Tribunal also gave weight to the medical conditions affecting the respondent and Mr Brookbanks and the fact that they had actively been looking for alternative accommodation. The Tribunal also took into account that the applicant did not object to an extension of that length.

15. Taking all the above factors into account the Tribunal determined to grant an order for eviction with an extended period prior to service of a charge until 22<sup>nd</sup> July 2024.

### **Decision**

The Tribunal determined to grant an order for eviction. The order shall not be executed prior to 1<sup>st</sup> August 2024.

### **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.**

# MC Kelly

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Legal Member/Chair

20<sup>th</sup> May 2024  
Date