

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/23/4291

Re: Property at 5 Antonine Court, Bo'ness, EH51 0ND (“the Property”)

Parties:

Ms Catherine Bell, Ms Lynne M Melrose, 21 Upper Gilmore Place, Edinburgh, EH3 9NL (“the Applicants”)

Mr Russell Maxwell, Mrs Karen Maxwell, 5 Antonine Court, Bo'ness, EH51 0ND (“the Respondents”)

Tribunal Members:

Ms H Forbes (Legal Member) and Ms E Shand (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted

Background

1. This is a Rule 66 application received in the period between 30th November 2023 and 21st February 2024. The Applicants are seeking an order for possession of the Property. The Applicants’ representative lodged a copy of the short assured tenancy agreement between the parties that commenced on 30th March 2017 until 1st October 2017 and monthly thereafter, copy Notice to Quit and section 33 notice together with evidence of posting and delivery, copy section 11 notice with evidence of service, and Form AT5.
2. By email dated 19th May 2024, the Applicants’ representative lodged a copy email from the Respondents of the same date.

The Case Management Discussion

3. A Case Management Discussion (“CMD”) took place by telephone conference on 11th June 2024. The Applicants were not in attendance, and were represented by Mrs McLaughlin, Letting Agent. The Respondents were in attendance.

4. Ms McLaughlin said the Applicants are seeking an order for possession. They wish to sell the Property due to the fact they are now in their seventies and no longer wish to let the Property. This is the only property they let. The Property is subject to an interest-only mortgage which will come to an end in 2026. Mortgage payments have risen recently.
5. The Respondents indicated that they do not wish to oppose the order, but they have been told by social housing providers to stay where they are until an order is granted. They will then be deemed homeless and may be accommodated in temporary accommodation pending the allocation of housing. They have considered private lets, but find the rent is beyond their budget. They are in discussion with a mortgage advisor about buying a property. They think it unlikely they will get a mortgage, and they could not afford to purchase the Property.
6. Responding to questions from the Tribunal, the Respondents said they have two children, aged eight and seventeen. Their eight-year-old is in school. A relative who does not drive collects the child from school, and they wish to stay in the area for this reason. The Respondents are both in employment. Mr Maxwell has a work van, which would be available to travel to work if he lived in another area. There are no health or social needs in respect of the family. The Respondents have not taken independent housing advice.
7. The Tribunal outlined the options available to it, including continuing the CMD to another date to allow the Respondents to take advice, or adjourning to an evidential hearing on reasonableness. The Tribunal offered to adjourn for a short period to allow the Respondents an opportunity to discuss their options. The Respondents confirmed they want to move forward and to return the Property to the Applicants, stating that an order for possession would allow them to do this.
8. There was some discussion about the Tribunal delaying the date of execution of the order for possession. The Respondents said this would be helpful to them. Mrs McLaughlin said it was unlikely the Applicants would oppose a delay to the date of execution, provided it was not an unreasonable delay. She suggested they may be amenable to a delay of two months.
9. The Tribunal adjourned to consider matters.

Findings in Fact and Law

10.
 - (i) The Applicants are the heritable proprietors of the Property.
 - (ii) Parties entered into a short assured tenancy in respect of the Property that commenced on 30th March 2017 until 1st October 2017 and monthly thereafter.

- (iii) Notice to Quit and Section 33 Notice were served on the Respondents.
- (iv) The short assured tenancy has reached its finish date.
- (v) The contractual tenancy terminated on 1st November 2023.
- (vi) Tacit relocation is not in operation.
- (vii) The Applicants have given the Respondents notice that they require possession of the Property.
- (viii) It is reasonable to grant the order for possession.
- (ix) It is reasonable to delay execution of the order for possession until 12th August 2024.

Reasons for Decision

11. Section 33 of the Act provides that the Tribunal may make an order for possession if satisfied that the short assured tenancy has reached its finish, tacit relocation is not operating, the landlord has given notice to the tenant that they require possession, and it is reasonable to make the order.
12. The contractual tenancy has been terminated and tacit relocation is not in operation. The Applicants have given the Respondents notice that they require possession of the Property.
13. In considering reasonableness, the Tribunal took into account the circumstances of both parties.
14. The Tribunal was satisfied that the Applicants wish to sell the Property due to their age and increases in mortgage payments.
15. The Tribunal took into account the family circumstances of the Respondents and the fact that granting the order may see them housed in temporary accommodation. The Tribunal noted that the Respondents did not wish any further time to take advice on their options, but wished to move forward to secure housing, and felt they could not do this without an order for possession.
16. In all the circumstances, the Tribunal considered it reasonable to grant the order.
17. The Tribunal considered it reasonable to delay execution of the order to the 12th August 2024, to allow the Respondents further time to secure suitable housing.

Decision

18. An order for possession of the Property is granted under section 33 of the Housing (Scotland) Act 1988. The order is not to be executed prior to 12 noon on 12th 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.



Legal Member/Chair

11th June 2024
Date