



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/23/4518

Re: Property at 67 Oakvale Road, Methil, Leven, KY8 2AP (“the Property”)

Parties:

Mrs Yvonne Russell, La Plechade, 25 Chemin De Chapelier, Luby Betmont, France, 65220, France (“the Applicant”)

Mr Billy Inglis, 67 Oakvale Road, Methil, Leven, KY8 2AP (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and made an Order for Possession of the Property.

Background

1. By application, dated 15 December 2023, the Applicant sought an Order for Possession of the Property under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”), namely recovery of possession on termination of a Short Assured Tenancy. The application also stated that the Applicant wishes to sell the Property.
2. The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Parties, commencing on 7 February 2017 and, if not ended on 8 August 2017 continuing on a month to month basis thereafter until terminated by either party giving no less than two months’ notice to the other party. The Applicant also supplied copies of a Form AT5 Notice given on 7 February 2017 and of a Notice given under Section 33 of the 1988 Act and a Notice to Quit, both dated 15 May 2023, and both requiring the Respondent to vacate the Property by 8 August 2023, with proof of delivery of both Notices on 16 May 2023. The Applicant also provided a copy of an email from McCrae

& McCrae, estate agents, Dunfermline, dated 13 December 2023, confirming that they have been instructed to sell the Property if and when the Applicant resumes it from the Respondent. The application stated that the Applicant's mortgages are higher than rent received and she has no option but to sell up all her properties before she goes into liquidation.

3. On 7 March 2024, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 28 March 2024. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

4. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 16 April 2024. The Applicant was represented by Miss Alexandra Wooley of Bannatyne Kirkwood France & Co, solicitors, Glasgow. The Respondent was not present.
5. Miss Wooley told the Tribunal that the Applicant is of retirement age and was very recently widowed. She had been looking to recover possession and sell all her rental properties as part of her retirement planning anyway but has had to accelerate the process as she now needs to sell. She formerly managed her property portfolio with her husband but now has to do it on her own. Miss Wooley understood that the Respondent lives alone, although he is occasionally visited by his son. She did not know whether the Respondent is working or is in receipt of benefits and did not know his age, but she understood from the letting agents that he has a medical condition, chronic obstructive airways disease. He has not been very communicative with the letting agents, but he has advised them that he has approached the local authority, who have told him that they cannot help him with accommodation in the absence of an Order for Possession. Miss Wooley reminded the Tribunal that it is almost a year since the Notice to Quit was served, so the Respondent has had a significant period of time to try and secure alternative accommodation.

Reasons for Decision

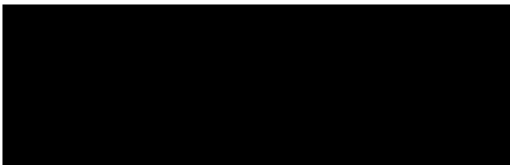
6. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.
7. Section 33 of the 1988 Act states that the Tribunal may make an Order for Possession of a house let on a Short Assured Tenancy if it is satisfied that the Short Assured Tenancy has reached its end, that tacit relocation is not operating, that no further contractual tenancy is for the time being in existence, that the landlord has given to the tenant notice stating that he

requires possession of the house, and that it is reasonable to make the Order for Possession.

8. The Tribunal was satisfied that the tenancy had reached its end, that, by service of the Notice to Quit, tacit relocation was not operating, that there was no further contractual tenancy in existence between the Parties and that the Notice required under Section 33 of the 1988 Act had been properly given. The remaining matter for the Tribunal to consider was, therefore, whether it would be reasonable to issue an Order for Possession.
9. In arriving at its decision as to whether it would be reasonable to make an Order for Possession, the Tribunal considered carefully all the evidence before it and noted in particular the fact that the Applicant has decided that, as she has very recently lost her husband and her mortgage payments exceed the rents she is receiving, she must sell the Property as part of her plan to exit the letting market. The Respondent did not make any written representations to the Tribunal, but it appears that he has no dependents living with him and that he has already approached the Council regarding being re-housed.
10. Having taken into account all the evidence, written and oral, before it, the Tribunal decided that it would be reasonable to make an Order for Possession of the Property.

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.



 G.Clark
 Legal Member/Chair

16 April 2023
Date