



**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/23/4515

Re: Property at 73 Randolph Street, Buckhaven, Leven, KY8 1AT (“the property”)

Parties:

Mr Douglas Rolland, Ben-Y-Vrackie, East Links, Leven, KY8 4JL (“the Applicant”)

**Mr Jason Glen, Ms Samantha Glen, 73 Randolph Street, Buckhaven, Leven,
KY8 1AT (“the Respondents”)**

Tribunal Members:

Graham Harding (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for possession of the property and removal of the Respondents from the property.

Background

1. By application dated 13 December 2023 the Applicant’s representatives, Bannatyne Kirkwood France & Co, Solicitors, Glasgow, applied to the Tribunal for an order for possession of the property and removal of the Respondents from the property under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Applicants representatives submitted a copy of the tenancy agreement, Form AT5, Notice to Quit and Section 33 Notice with proof of service, a Sales Agreement and a Section 11 Notice with proof of intimation in support of the application.
2. By Notice of Acceptance dated 21 February 2024 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondents by Sheriff Officers on 30 April 2024.

The Case Management Discussion

4. A CMD was held by teleconference on 5 June 2024. The Applicant did not attend but was represented by Ms Wooley from the Applicant's representatives. The Respondents did not attend nor were they represented. The Tribunal being satisfied that proper intimation of the CMD had been given to the Respondents determined to proceed in their absence.
5. Ms Wooley advised the Tribunal that Mrs Glen had been in recent contact with the Applicant to advise that she had been in touch with the local council who had told her that she must remain in the property until the Tribunal granted an order for possession or she would be treated as being deliberately homeless and would not be rehoused. Ms Wooley went on to say that there were no issues with the payment of rent.
6. The Tribunal noted that a Short Assured tenancy commenced on 22 May 2015 and endured until 21 May 2016 and thereafter with either party being able to terminate the tenancy on giving two months' notice. The Tribunal noted the Respondents were served with a Notice to Quit and Section 33 Notice by recorded delivery post on 15 June 2023 giving them until 21 September 2023 to remove from the property. The Tribunal also noted that Fife Council had been given notice of the proceedings by way of a Section 11 Notice.
7. Ms Wooley confirmed that the Applicant had a buyer for the property once vacant possession had been obtained. She advised the Tribunal that the Applicant had a small portfolio of 3 rental properties in his own name that he wished to dispose of as he was 64 years old and was preparing for retirement. In response to a further query from the Tribunal Ms Wooley said that the Applicant was also a director in a property company with a further 13 properties and that it was also his intention to dispose of his interest in these as well. Ms Wooley explained that the property required renovation and the Applicant did not have the capacity to see that through and that this was a further reason for wishing to sell the property. In response to being asked what impact it would have on the Applicant if the order for possession was not granted Ms Wooley said that it would disrupt the Applicant's plans to retire and that the Applicant should not be forced to be a landlord against his will and that it would have an adverse effect on the Applicant if forced to sell the property below market value with a sitting tenant.
8. With regards to the Respondents' circumstances, Ms Wooley advised the Tribunal that Mrs Glen had health issues and was in receipt of Disability Benefit. Ms Wooley said that the property was no longer suitable for the Respondents needs as they required a smaller property that was easier to heat.
9. Ms Wooley submitted that the order should be granted.

Findings in Fact

10. The parties entered into a Short Assured tenancy that commenced on 22 May 2016 and endured until 21 May 2016 and for two months thereafter until terminated by either party.
11. The Applicant wishes to retire from property letting and dispose of his portfolio of properties.
12. The Applicant has a buyer for the property once vacant possession has been obtained.
13. The Respondents were served with a Notice to Quit and Section 33 Notice on 15 June 2023.
14. Fife Council was given intimation of the proceedings by way of a Section 11 Notice.
15. The Respondent Mrs Samantha Glen has health issues and wishes to move to a smaller property that is easier to heat.
16. The Respondents have been advised by Fife Council to remain in the property until an order for possession is granted by the Tribunal.
17. The property is in need of renovation that the Applicant does not feel able to carry out.

Reasons for Decision

18. The Tribunal was satisfied from the written representations and documents submitted together with the oral submissions from Ms Wooley that the parties entered into a Short Assured tenancy agreement on 22 May 2015 that has continued by agreement until a notice to Quit and Section 33 Notice was served on the Respondents on 15 June 2023. The Tribunal was also satisfied that proper intimation of the proceedings was sent to Fife Council by way of a Section 11 Notice. The Tribunal accepted that it was the Applicant's intention to retire and dispose of his property portfolio and that he had found a buyer for the property if he obtained vacant possession. In reaching a decision on whether it was reasonable to grant the order sought the Tribunal took account of the fact that the Respondents despite being given an opportunity to submit written representations to the Tribunal and to attend the CMD had chosen to do neither. The Tribunal also took account of the information provided by Ms Wooley about the Respondents and Mrs Glen in particular and that the property was no longer suitable for her needs and that she had been in contact with Fife Council with a view to being rehoused. Taking everything into account the Tribunal was satisfied that it was reasonable in the circumstances to grant the order sought by the Applicant.

Decision

19. The Tribunal being satisfied it had sufficient information before it to make a decision without the need for a hearing determined to grant the Applicant an order for possession of the property and the removal of the Respondents from 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.

**Graham Harding
Legal Member/Chair**

**5 June 2024
Date**