



**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/24/0319

Re: Property at 19/3 Magdalene Drive, Edinburgh, EH15 3DX (“the Property”)

Parties:

**Mrs Margaret Falconer, Holyrood Architecture, Salvage, 146 Duddingston Road
West, Edinburgh, EH16 4AP (“the Applicant”)**

**Ms Helen Marr, 19/3 Magdalene Drive, Edinburgh, EH15 3DX (“the
Respondent”)**

Tribunal Members:

Valerie Bremner (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that a possession order be granted in respect of the
property**

Background

1.This application for an eviction order in terms of Rule 66 of the Tribunal rules of procedure was first lodged with the Tribunal on 19th January 2024 and accepted by the Tribunal on 29th January 2024.A case management discussion was fixed for 12th July 2024 at 10am.

Case Management Discussion

2.The Applicant Mrs Falconer attended the case management discussion and represented herself. The Respondent Ms Marr also attended the case management discussion and was supported by her support worker Angela Blair.

3.The Tribunal had sight of the application, a tenancy agreement, a Form AT5, a notice to quit, a notice in terms of section 33 of the Housing (Scotland) Act 1988, a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 and an e mail sending this to the local authority, together with an authorisation for the Applicant to act from a joint owner.

4.The parties had entered into a short, assured tenancy with effect from 29th March 2008 and this ran until 30th September 2008.If not terminated by either party on at least 2 months' notice, the agreement set out that it continued on a monthly basis after the first period. The Applicant had hand delivered to the Respondent on 13th October 2023 a notice to quit the property by 29th December 2023 and a notice in terms of section 33 of the Housing (Scotland) Act 1988 seeking possession of the property by that same date. The Applicant indicated that she had chosen this date with reference to the date of the original term of the lease and regarded the lease as running monthly from 29th of each month. Ms Marr the Respondent agreed that this was her understanding of the position as regard the dates of the monthly agreement. The Applicant had also submitted a notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 to Edinburgh City Council on 26th January 2024.

5.The Applicant explained that she wants to sell the property. She said that she is nearing retirement age and moving job and her husband was reducing his hours at work. She wanted to help her family with childcare as she has young grandchildren. She said that she has a few other rental properties but is selling them all and has agreed to sell this 2 bedroom property to the council as she is leaving the rental market. She had asked if she could sell the property with the Respondent Ms Marr in it as a tenant but was told that vacant possession was required for the sale. She said that Ms Marr had been a great tenant and there had been no issues.

6.Ms Marr indicated that she did not oppose the eviction and did not want to suggest that it would not be reasonable to evict her. She had registered with the council to obtain social housing. She was bidding on properties just now and was keen to get something soon. Her support worker Angela Blair told the tribunal that the Respondent has physical and mental health difficulties and that she had been supported for some 15 years. She was keen that the Respondent had an eviction date to work towards as Miss Marr was anxious about the situation. She had the maximum number of points allocated to her to bid for properties given her health issues and Ms Blair was hopeful that she would get a property even if she was placed in temporary accommodation first given the current state of the rental property market. She advised the Tribunal that the Respondent would be supported throughout the process and there was discussion of timescales if an order was granted. Ms Blair indicated that timescales appeared sufficient to allow Miss Marr to move out and put her property in storage.

7.Ms Blair advised the tribunal that it would be good for the Respondent to have a fresh start and she hoped for a smooth transition around the move out date. The Applicant Mrs Falconer was keen for this to happen provided there was no extension of timescales for any order granted to take effect.

8.The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Relevant Legislation

9. Section 33 Housing (Scotland) Act 1988

Recovery of possession on termination of a short assured tenancy.

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied—

(a) that the short, assured tenancy has reached its finish;

(b) that tacit relocation is not operating; ..

(c)

(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house , and

(e) that it is reasonable to make an order for possession.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;

(ii) in any other case, two months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.

Findings in Fact

10. The parties entered into a short assured tenancy at the property with effect from 29th March 2008.

11. This initial rental period ended on 30th September 2008 but the tenancy agreement contained a clause to the effect that the tenancy continued on a monthly

basis after this period unless brought to an end by either party on at least two months' notice.

12. Both parties agreed that the tenancy continued from the 29th of each month on a monthly basis after the initial term.

13. The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988

14. On 13th October 2023 the Applicant landlord hand delivered to the Respondent a notice in terms of section 33 of the Housing (Scotland) Act 1988 stating that the landlord required the property back by 29th December 2023.

15. On 13th October 2023 the Applicant landlord hand delivered to the Respondent a notice to quit the property which sought to terminate the tenancy as of 29th December 2023 and this notice to quit was in the prescribed form. The notice to quit terminated the tenancy with effect from 29th December 2023 which is a valid end date for the tenancy as agreed by both parties

16. Tacit relocation is not in operation in relation to this tenancy

17. A notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was sent to Edinburgh City Council in relation to this application on 26 January 2024.

18. The Applicant wishes to sell the property as she is nearing retirement and is selling her remaining rental properties in order to leave the rental market.

19 The Applicant has agreed to sell the property to the local authority but this sale requires vacant possession.

20. The Respondent does not oppose the granting of a possession order for the property and does not suggest it would not be reasonable to make such an order.

21. The Respondent is seeking social housing and is registered with Edinburgh City Council and is currently bidding on properties.

22. The Respondent has a number of physical and mental health challenges and has the assistance of a support worker who will support her through the process of leaving the current property and finding another place to stay.

Reasons for Decision

23. The tribunal was satisfied that appropriate notices in proper form had been served in this application given the agreement of parties as to the end date for the monthly tenancy agreement. The Respondent does not oppose a possession order or suggest it is not reasonable to grant the order and has taken steps to seek another

property in which to live. Although she has physical and mental health challenges she is being supported through the process by her long term support worker. The applicant is leaving the rental property market and has sold a number of her rental properties and wishes to sell this one. She has agreed to sell the property to the local authority but has been advised that the Respondent cannot stay on in the property as a tenant and the sale requires vacant possession. The tribunal weighed up all of the circumstances and considered that it was reasonable to grant the order requested in this application.

Decision

The Tribunal granted a possession order in respect 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.

V. Bremner

Legal Member/Chair

12.7.24
Date