



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 (“the 1988 Act”) and Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/EV/24/0418

Re: Property at 4 Forest Lane, Hamilton, South Lanarkshire, ML3 7SF (“the Property”)

Parties:

Mr Jonathan Dzimwasha, 8 The Saplings, Woodside, Telford, TF7 5UJ (“the Applicant”)

Igloo Estate Agents, 2 Gateside Street, Hamilton, South Lanarkshire, ML3 7JG (“the Applicant’s Representative”)

Miss Avalon Faulds, 4 Forest Lane, South Lanarkshire ML3 7SF (“the Respondent”)

Tribunal Members:

**Ms Susanne L. M. Tanner K.C. (Legal Member)
Mrs Helen Barclay (Ordinary Member)**

Decision (in absence of Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) (i) is satisfied in terms of Section 33 of the 1988 Act that the short assured tenancy for the Property has reached its end; tacit relocation is not operating; no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and the Applicant has given to the Respondent two months’ notice stating that they require possession of the house; (ii) that it is reasonable to make an order for possession in the circumstances of the case; and (iii) made an order for possession in terms of Section 33 of the 1988 Act; but deferred the date of enforcement of the order to 26 September 2024.

Statement of Reasons

1. The Applicant's Representative made an application to the tribunal on 24 November 2023 in terms of Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
2. The Applicant seeks the Respondent's eviction from the Property under Section 33 of the 1988 Act (possession on termination of a short assured tenancy).
3. The Applicant's Representative lodged:
 - 3.1. Copy of a short assured tenancy agreement;
 - 3.2. Copy of an AT5 notice;
 - 3.3. Copy of notice to the Respondent under Section 33(1)(d) of the 1988 Act, notifying the Respondent that the Applicant required possession of the Property;
 - 3.4. Copy Notice to Quit notifying the Respondent that she was required to remove from the Property;
 - 3.5. Copy proof of service of the Section 33 Notice and Notice to Quit by Sheriff Officers;
 - 3.6. a copy of the Section 11 Notice which was sent to the local authority with proof of service; and
 - 3.7. Additional information from the Applicant's Representative relating to the Application.
4. The tribunal's administration obtained the title sheet to the property which shows that the Applicant is one of the joint registered proprietors of the Property.
5. The tribunal's administration asked the Applicant's Representative to provide proof that the joint proprietor consents to the Application being made. Written consent was lodged from Mary Dzimwasha, the joint proprietor.
6. On 3 April 2024, the Application was accepted for determination and a Case Management Discussion ("CMD") was thereafter fixed for 30 July 2024 at 1000 by teleconference.

7. By letter of 19 June 2024, parties were notified by letter of the date, time and place of the CMD and told that they were required to attend. Parties were also advised in the same letter that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the Application, which may involve making or refusing an eviction order. If parties do not attend the CMD this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair. The Respondent was asked to submit any written representations to the tribunal's offices by 10 July 2024.
8. The Application paperwork and notification of the date, time and place of the CMD was personally served on the Respondent by Sheriff Officers.
9. The Respondent did not submit any defence or written representations or make any contact with the tribunal's administration.

10. Case Management Discussion ("CMD"): 30 July 2024 at 1000 by teleconference

- 10.1. Ms Donna Marie Stewart, from the Applicant's Representative, attended on behalf of the Applicant.
- 10.2. The Respondent attended the CMD.
- 10.3. Ms Faulds said that she is not opposing the Application. She said that she has registered with a local authority housing officer. She said that the housing officer is waiting for the eviction order and will then look for alternative accommodation. Ms Faulds requested a longer period than 30 days for the enforcement of the order to give the council additional time to find alternative accommodation for her and her adult son (aged 18). She said that if the eviction order is made today she will take it to her allocated local authority housing officer. Ms Faulds is aged 38 and is a self-employed hairdresser. She said that she is not in a position to get a mortgage or buy a property. She said that she now qualifies for social housing. She said that she supports her son, he has recently finished college and is starting a full time University course in September. Her benefits will change. Ms Faulds said that the Property is a semi-detached three bedroomed property. There are rent arrears on the account but she is unsure what level they are at. She said that she was getting partial housing benefit and now she is getting full housing benefit that is going straight to the Applicant.
- 10.4. Ms Stewart asked the tribunal to make the order for possession. She said on behalf of the Applicant that he would consent to an additional month

as well as the 30 day appeal period before the order could be enforced. Ms Stewart said that the rent arrears are £1975.00 as at today's date. They have been receiving £475.00 per month from the DWP but the rent is £595. They have not received the top up from the Respondent since 2022. The Applicant's Representative was contacted by the DWP because Ms Faulds tried to stop that direct payment but the DWP did not agree to that and direct payments have continued. Ms Stewart understands that the benefits are going to cease for Ms Faulds' adult son. Ms Faulds has told them that she cannot afford to continue in a private let and that she wants to get a council property.

10.5. The tribunal adjourned to discuss the case. The tribunal was satisfied that there was sufficient information to make a decision on the application.

11. The tribunal makes the following findings-in-fact:

11.1. The Applicant is one of the registered proprietors of the Property. The other joint proprietor has provided her consent to the Application for an order for possession being made.

11.2. There is a short assured tenancy between the Applicant and the Respondent for the Property which began on 7 October 2014 and lasted until 6 April 2015 and then by tacit relocation on a 2 monthly basis.

11.3. The short assured tenancy reached its end on 6 October 2023 by service on behalf of the Applicant on the Respondent, on 14 July 2023, of a Notice to Quit, notifying the Respondent that the tenancy would reach its termination date as at 6 October 2023.

11.4. Tacit relocation is no longer operating;

11.5. No further contractual tenancy is for the time being in existence.

11.6. A Section 33 notice was served on behalf of the Applicant on the Respondents on 14 July 2023, notifying the Respondent that the Applicant required vacant possession as at 6 October 2023.

11.7. The Applicant has given to the Respondent at least three months' notice stating that he requires possession of the Property.

11.8. The Application to the tribunal was made on 24 November 2023

11.9. The rent arrears as at 30 July 2024 are £1975.00.

11.10. The Applicant's Representative has been receiving direct payment of £475.00 per month from the DWP since 2022. The monthly rent is £595. The Respondent has not paid the monthly balance of rent due for that period.

11.11. The Respondent is 38 and is a self employed hairdresser.

11.12. The Respondent's adult son, aged 18, lives with her in the Property. He is a full time student and is starting a University course in or about September 2024.

11.13. The Respondent cannot afford to stay in private accommodation and does not oppose the order for possession but wishes additional time before being removed from the Property, to allow the local authority to find alternative accommodation for her and her son.

11.14. The Applicant does not oppose an additional month before enforcement of the order can be made.

12. Findings in Fact and Law

12.1. The tribunal is satisfied that the requirements of Section 33 of the 1988 Act are met.

12.2. The tribunal is satisfied that in all the circumstances and on the basis of the findings of fact, it is reasonable and to make an order for possession of the Property; but to defer enforcement of the order until 26 September 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.

S. Tanner

30 July 2024

Legal Member/Chair