



**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/24/0121

Re: Property at 118 Greenloanings, Kirkcaldy, Fife, KY2 6NL (“the Property”)

Parties:

**Mrs Yvonne Munro, Mr Wayne Munro, 1 Datie Mill House, Kirkcaldy, Fife, KY2
5XX (“the Applicant”)**

**Ms Donna Henderson, 118 Greenloanings, Kirkcaldy, Fife, KY2 6NL (“the
Respondent”)**

Tribunal Members:

Valerie Bremner (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a possession order should be made for the property in favour of the Applicant.

Background

1. This application for a possession order in terms of Rule 66 of the Tribunal rules of procedure was first lodged with the Tribunal on 9th January 2024 and accepted by the Tribunal on 19th March 2024. A case management discussion was fixed for 5th July 2024 at 2pm.

Case Management Discussion

2. The Applicants did not attend the case management discussion but were represented by Mrs McCreadie of Innes Johnston solicitors. The Respondent attended the case management discussion and represented herself.

3. The Tribunal had sight of the application and a paper apart, a tenancy agreement, a Notice to Quit and notice in terms of section 33 of the Housing (Scotland) Act 1988 both dated 12th July 2023, proof of delivery of these notices to the Respondent, a form AT 5, photographs, a text history, an anti-social behaviour letter from a council, a mortgage letter ,a pre action protocol letter regarding rent arrears, a rent statement, a Notice in terms of Section 11 of the Homelessness etc. (Scotland) Act 2003, a Facebook post and a paper apart setting out the Applicant's position. The Applicant's representative had also sent emails to the Tribunal regarding the length of the initial tenancy term. In these representations they submitted that the tenancy had initially been for 6 months as the agreement specifically included the start and end dates. The Respondent did not challenge this at all at the case management discussion.

4. The parties entered into a short assured tenancy at the property with effect from 2nd August 2011 and this tenancy term ended on 1st February 2012. The lease contained a clause setting out that the tenancy continued on a month to month basis after the initial term unless brought to an end by either party on 2 months' notice.

5. The Applicants' agents had sent a Notice to Quit and a Notice in terms of Section 33 of the Housing (Scotland) Act 1988 both dated 12th July 2023 to the Respondent by royal mail signed for service and the Tribunal was shown proof of delivery on 13th July 2023. These notices indicated that the Respondent should leave the property by 1st October 2023 as the landlord required possession by that date. A Notice in terms of Section 11 of the Homelessness etc. (Scotland) Act 2003 was sent to Fife Council in relation to this application on 12th January 2024,

6. Mrs McCreadie requested a possession order as the tenancy had been brought to an end and no new tenancy had been created. She also raised a number of other issues with the Tribunal. She submitted that there had been delays during the tenancy in paying rent, and often the full amount was not paid. The rent had been in arrears for some 44 months of the tenancy. Most recently she said there had been rent arrears of £650. A pre action protocol letter had been sent signposting the Respondent to sources of support. There had been complaints from neighbours regarding nuisance and annoyance by way of noise coming from the property. The back garden was not being maintained in a tidy state as required by the tenancy agreement and the Applicants were requiring to pay to have the hedge at the property cut. Photographs had been produced showing the garden and the outside of the property. The Applicant had a mortgage on the property, a two bedroom property, which has increased and there is a shortfall between mortgage and other rental costs such as insurance, electrical certification and landlord registration fees, and the rent paid on the property each month and as a result the Applicant has decided to sell the property as it is no longer financially viable to rent it out. The monthly mortgage payable in terms of the tenancy agreement is £584.36 and the rent paid each month for the let property is £525. The Applicants had advised the Respondent verbally of their intention to sell.

7. The Respondent had received the application and paperwork and said that she did not contest it at all. She said that she had just come out of hospital but confirmed that she well enough to attend and take part in the audio case management discussion. She intended to go into social housing and understood that the council would accept her as homeless. She said that her son had moved back in with her at the rented property. He had a number of medical conditions and she received benefits and adult

disability payments for him. She was waiting for the possession order and hoped that she would be placed in social housing with her son. She currently received a housing element paid along with universal credit and said that she did pay the rent and that this was now up to date. Mrs McCreadie for the Applicant accepted that the rent was now up to date.

8. The Respondent Ms Henderson accepted that there would have been noise coming from the rented property but did not accept that this would have been caused by a power drill but said that her son was a musician and he often played music in the property. She also said that the noise might have been caused by her dancing around in the property. She said that when she was working she worked night shift and for years could not go out of the property due to behaviour of one of the neighbours. She said that she could not maintain the hedge and that there had been a flood in the garden which had contributed to its state. With reference to complaints made by neighbours she said that she had been prepared to discuss matters with them but they had refused mediation. Ms Henderson said that she too had both physical and mental health conditions which she mentioned in detail at the case management discussion.

9. Mrs McCreadie was instructed to move for a possession order and indicated that she was instructed as to the various issues which were causes for concern but as the Respondent accepted there had been noise and that the garden was not maintained she had no instructions to dispute the reasons given for these issues by the Respondent. She was not relying on the suggestion that a power drill had been used and did not dispute the Respondents explanation for the noise at the property.

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

Relevant Legislation

11. 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 time 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

12. The Parties entered into a short assured tenancy at the property with effect from 2nd August 2011 and the initial tenancy term expired on 1st February 2012.

13. The tenancy contained a clause to the effect that the tenancy continued on a month to month basis after the initial term unless brought to an end by either party on 2 months' notice.

14. The initial term of the tenancy created between the parties was for 6 months when the first and last dates of the tenancy are included and as such the tenancy was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.

15. On 13th July 2023 agents for the Applicant sent to the Respondent a notice in terms of Section 33 of the Housing (Scotland) Act 1988 stating that the landlord required possession of the property by 1st October 2023.

16. On 13th July 2023 agents for the Applicant sent to the Respondent a Notice to Quit which sought to terminate the tenancy as of 1st October 2023 and the Notice to Quit was in the prescribed form.

17. The Notice to Quit terminated the tenancy with effect from 1st October 2023 which is a valid end date for the tenancy.

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

19. A notice in terms of section 11 of the Homelessness etc. (Scotland) Act 2003 was sent to Fife Council in relation to this application on 12th January 2024.

20. The Applicants intend to sell the let property once vacant as the costs of renting including a mortgage on the property are greater than the rent received and it is not financially viable for them to continue as landlords.

21. The mortgage on the property is £584.36 per month and the monthly rent paid in terms of the tenancy is £525.

22. Rent due in terms of the tenancy agreement has been in arrears for 44 months of the tenancy but at the date of the case management discussion the rent was up to date.

23. Neighbours at the property have complained that there has been loud noise from the property during the tenancy and the Respondent accepts that there has been noise emanating from the rented property during the tenancy.

24. The garden at the property has not been maintained in a tidy state by the Respondent as required by the tenancy agreement and she accepts that she has not been able to maintain the garden and hedge at the property.

25. The Respondent and her son live at the rented property and both have health conditions.

26. The Respondent is in receipt of benefit and is intending to go into social housing with her son.

27. The Respondent does not contest the granting of a possession order for the property by the Tribunal.

Reasons for Decision

28. The Tribunal was satisfied having considered all the circumstances in this application that it was reasonable to grant the order. The Respondent does not suggest that the application should not be granted and having considered all the circumstances the Tribunal attached the greatest weight to the fact that the Applicants wish to sell the property as it is not financially viable for them to continue to rent it out as the costs each month including the mortgage are greater than the rent which is paid.

Decision

The Tribunal determined that a possession order should be made for the property in favour of the Applicant.

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

5.7.24

Date