



**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/24/1166

Re: Property at 42 Chapman Drive, Carnoustie, Angus, DD7 6DX ("the Property")

Parties:

Mrs Dawn Tabra and Mr Ez Tabra (formerly Mr Uzaldin Jalal Tabra), 4 Fairway View, Letham Grange, Angus, DD11 4XE; 4 Fairway View, Letham Grange, DD11 4XE ("the Applicants")

Mrs Maysaa Alkado, 42 Chapman Drive, Carnoustie, Angus, DD7 6DX ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision

At the Case Management Discussion ("CMD"), which took place by telephone conference on 28 August 2024, the Applicants were in attendance. The Respondent was also present. She was supported by her daughter.

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that:-

Background

The Tribunal noted the following background:-

- i. The Applicants leased the Property to the Respondent in terms of a Short Assured Tenancy ("the SAT") that commenced on 18 August 2014.
- ii. The initial term of the SAT was to 17 August 2015 and in terms thereof the SAT thereafter continued on a month to month basis.
- iii. On 2 August 2023, the Applicants served on the Respondent by recorded delivery post a Notice to Quit and a Notice under Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") requiring the Respondent remove from the Property by 17 January 2024.
- iv. The Applicants have served on Angus Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

The CMD

At the CMD the Second Applicant made the following oral submissions to supplement the application and supporting papers already lodged:-

- i. In August 2022 the Applicants served formal Notices on the Respondent to vacate the Property in January 2023.
- ii. The Respondent was then having difficulty finding alternative accommodation and after a constructive discussion it was agreed to extend the tenancy for a further year.
- iii. Further Notices were served in August 2023 to vacate in January 2024.
- iv. Again the Respondent had not found alternative accommodation and the Applicants agreed to extend her tenancy by a further month.
- v. The Applicants have been understanding of the Respondent's circumstances.
- vi. The Second Respondent will be 65 years of age in October. His health is not great. He has severe sciatic pain and, as a result, had to give up work earlier this year.
- vii. The First Respondent also has a number of health issues the most serious of which being a total knee replacement. She is no longer able to work either.
- viii. The Applicants had three rental properties in Carnoustie. One was sold last year. Their intention is to sell the Property and the other rental property to provide for the Applicants' retirement. Notices to Quit have been served on the tenants of the other property and an application has been submitted for an eviction order relative to that property too.
- ix. Campbell Boath, Solicitors, Dundee are instructed by the Applicants to deal with their property sales.
- x. The Applicants own their own home at Lethan Grange, by Arbroath.
- xi. Since letting the Property to the Respondent in 2014 the rent has never been increased.
- xii. The Property has been well maintained by the Applicants and the Respondent.

At the CMD the Respondent made the following oral submissions:-

- i. The Respondent lives in the Property with her three daughters and her son. Her daughters are aged 20, 15 and 13 years and her son is aged 20 years. Her elder daughter is at home. Her son has just started at Dundee & Angus College.
- ii. None of the children have disabilities.
- iii. The Respondent is not in employment. She is in receipt of Universal Credit.
- iv. The Respondent has a heart condition.
- v. The Respondent has tried to find a private let but she has been unable to do so as she is in receipt of Universal Credit.
- vi. The Respondent applied to Angus Council for accommodation approximately 2 years ago. Whenever she enquires as to the position she is told she just needs to wait.
- vii. The Property is too small for 5 people. It has only three bedrooms. The Respondent would like to move.

The Tribunal adjourned to consider the application and associated paperwork and the oral representations of the parties.

Findings in Fact

The Tribunal made the following findings in fact:-

- i. The Applicants leased the Property to the Respondent in terms of the SAT that commenced on 18 August 2014.

- ii. The initial term of the SAT was to 17 August 2015 and in terms thereof the SAT thereafter continued on a month to month basis.
- iii. In August 2022 the Applicants served formal Notices on the Respondent to vacate the Property in January 2023.
- iv. The Respondent was then having difficulty finding alternative accommodation and after a constructive discussion it was agreed to extend the tenancy for a further year.
- v. On 2 August 2023, the Applicants served on the Respondent by recorded delivery post a Notice to Quit and a Notice under Section 33 of the 1988 Act requiring the Respondent remove from the Property by 17 January 2024.
- vi. Again, the Respondent had not found alternative accommodation and the Applicants agreed to extend her tenancy by a further month.
- vii. The Applicants have been understanding of the Respondent's circumstances.
- viii. The Second Respondent will be 65 years of age in October. His health is not good. He has severe sciatic pain and, as a result, had to give up work earlier this year.
- ix. The First Respondent also has a number of health issues the most serious of which being a total knee replacement. She is no longer able to work either.
- x. The Applicants had three rental properties in Carnoustie. One was sold last year. Their intention is to sell the Property and the other rental property to provide for the Applicants' retirement. Notices to Quit have been served on the tenants of the other property and an application has been submitted for an eviction order relative to that property too.
- xi. Campbell Boath, Solicitors, Dundee are instructed by the Applicants to deal with their property sales.
- xii. The Applicants own their own home at Lethan Grange, by Arbroath.
- xiii. Since letting the Property to the Respondent in 2014 the rent has never been increased.
- xiv. The Respondent lives in the Property with her three daughters and her son. Her daughters are aged 20, 15 and 13 years and her son is aged 20 years. Her elder daughter is at home. Her son has just started at Dundee & Angus College.
- xv. None of the children have disabilities.
- xvi. The Respondent is not in employment. She is in receipt of Universal Credit.
- xvii. The Respondent has a heart condition.
- xviii. The Respondent has tried to find a private let but she has been unable to do so as she is in receipt of Universal Credit.
- xix. The Respondent applied to Angus Council for accommodation approximately 2 years ago. Whenever she enquires as to the position she is told she just needs to wait.
- xx. The Property is too small for the Respondent and her family. It has only three bedrooms. The Respondent would like to move.
- xxi. The Applicants have served on Angus Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

Reasons for Decision

There are no matters of fact in dispute between the parties.

The Tribunal considered whether to grant an eviction order under Section 33 of the 1988 Act.

Section 33(1) states:-

"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 ish;

(b) that tacit relocation is not operating;

(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.

The Tribunal is satisfied that the SAT had reached its ish and that tacit relocation is not operating.

The Tribunal is satisfied that the Applicants had given proper notice to the Respondent that they require possession of the Property having regard to the terms of Section 33(2).

The Tribunal considered carefully whether it would be reasonable to grant an eviction order.

The Tribunal took into account the following:-

- i. The Applicants have poor health and are unable to work. They are now retired and require to realise their assets to fund their retirement as a result.
- ii. The Applicants are selling all of their rented properties and have already sold one of them. They are now seeking to recover vacant possession of the other two properties through the Tribunal.
- iii. The Applicants have allowed the Respondent extended time to find alternative accommodation and have maintained her rent at the original amount stated in the SAT for a period of approximately 10 years.
- iv. The Tribunal did not consider it appropriate to compel the Applicants to continue the tenancy where to do so would be to their financial detriment.
- v. Whilst the Respondent would prefer to continue to live in the Property with her family she offered no compelling reasons to remain there.
- vi. There were therefore no reasons for the Respondent to remain in occupation of the Property that outweighed those factors outlined above that justify the Applicants' desire to sell it.
- vii. The Property is already overcrowded for the Respondent's family.
- viii. She has been waiting to be housed by Angus Council for around 2 years.
- ix. She cannot afford alternative accommodation in the private sector as rents are too high and she is in receipt of Universal Credit.

The Tribunal determined that it would be reasonable to issue an eviction order.

The Tribunal hope the granting of the order will now allow the Respondent to attain the priority she needs to be allocated suitable accommodation by Angus Council.

Decision

The Tribunal granted an eviction order in favour of the Applicants.

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.

Gillian Buchanan

28 August 2024 Legal Member/Chair
Date