



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/24/1344

Re: Property at 7 Garry Place, 7 Toberagan Road, Pitlochry, PH16 5AH ("the Property")

Parties:

Mr William Bright, 27 Fishersview Court, Station Road, Pitlochry, PH16 5AN ("the Applicant")

Mr Robert Szwedo, 7 Garry Place, 7 Toberagan Road, Pitlochry, PH16 5AH ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Elaine Munroe (Ordinary Member)

Decision (in absence of the Respondent)

At the Case Management Discussion ("CMD"), which took place by telephone conference on 26 August 2024, the Applicant was not in attendance but was represented by his daughter, Mrs Jackie Mackay. The Respondent was neither present nor represented.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") had been satisfied relative to the Respondent having received notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29. Indeed the Respondent had previously submitted by email dated 12 August 2024 a postponement request in respect of the CMD which was refused.

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

Background

The Tribunal noted the following background:-

- i. The Applicant is the heritable proprietor of the Property.
- ii. The Property was previously leased to the Respondent in terms of a Short Assured Tenancy Agreement ("the SAT") that commenced on 2 October 2012.
- iii. The Applicant is in right of the Landlord's interest in the SAT.

- iv. On 18 July 2023, the Applicant 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 2 October 2023. Service of the Notices was acknowledged by the Respondent in writing on 11 September 2023.
- v. The Applicant served on Perth & Kinross Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- vi. The application is dated 19 March 2024.

The CMD

At the CMD Mrs Mackay for the Applicant made the following additional oral representations:-

- i. The Property requires to be sold to fund care costs being incurred by the Applicant.
- ii. The Applicant's wife (Mrs Mackay's mother) died in May 2022.
- iii. In early 2023 the Applicant's health deteriorated and he was admitted to hospital on 19 May 2023 pending major heart surgery.
- iv. On 6 June 2023 the Applicant received a new heart valve and bypass surgery. He was due to remain in hospital after the operation for a period of 10 days but remained there for more than four months. During that period his condition was not improving and it was anticipated that significant care costs would be incurred if and when he got home. On that basis the Notice to Quit and Section 33 Notice were served.
- v. The Applicant is home but requires care five days each week. The carers attend for 1 to 2 hours each day giving assistance with the Applicant's personal care, shopping, laundry etc.
- vi. The Applicant's own finances are being used to meet the care costs and these are running out. Mrs Mackay and her brother are now funding the costs which is a source of stress to the Applicant.
- vii. The Applicant has no strength and it is anticipated that his condition will deteriorate further.
- viii. Perth & Kinross Council contribute £160 per month towards the Applicant's personal care costs. The costs of the care being received are £300 per week.
- ix. The Applicant has three other properties that are rented. The Applicant's wife was a landlady until her death and the Applicant inherited the properties from her.
- x. The three other properties now owned by the Applicant are family properties built in around 1880. These properties are tenanted. One of the properties is occupied by the Applicant's carer. Another of the properties is occupied by a tenant who is in their mid-70s with health issues, and the other property is tenanted by a lady who is also in her 70s and her husband who is in his 80s and who have lived there for around 30 years. That latter property previously belonged to the local estate and the Applicant's wife, who was philanthropic in nature, bought the property from the estate to allow the couple to continue to live there.
- xi. No steps have been taken to sell any of the other properties owned by the Applicant at this time.
- xii. The Applicant has no mortgage on any of the properties.
- xiii. The Applicant lives alone.
- xiv. Mrs Mackay has no further information from the Respondent as to the progress of his application to Perth & Kinross Council for local authority accommodation. However, Mrs Mackay previously spoke to the Council and was advised that until a decision is made by the Tribunal relative to this application and given the

- shortage of accommodation available, the Respondent's application would not progress.
- xv. The Respondent is approximately 60 years of age. He has lived in the Property with his wife for approximately 12 years. They live in the Property alone.
 - xvi. Mrs Mackay believes that the Respondent's wife is employed in a local hotel and that the Respondent works doing building maintenance. He is self-employed.
 - xvii. The Respondent and his wife have a daughter but Mrs Mackay is not sure where she lives.
 - xviii. The Property has been selected for sale as it is a two bedroomed flat in Pitlochry and will sell quickly. The other three properties have more sentimental value and are in Moulin.
 - xix. The Respondent and his wife would like to move to Council accommodation. Mrs Mackay believes they have been on the waiting list during the entire period that they have occupied the Property. Mrs Mackay hopes that if an eviction order is granted by the Tribunal that will assist their housing application to be granted.
 - xx. The Applicant seeks an eviction order.

Findings in Fact

The Tribunal made the following findings in fact:-

- i. The Applicant is the heritable proprietor of the Property.
- ii. The Property was previously leased to the Respondent in terms of a Short Assured Tenancy Agreement ("the SAT") that commenced on 2 October 2012.
- iii. The Applicant is in right of the Landlord's interest in the SAT.
- iv. On 18 July 2023, the Applicant 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 2 October 2023. Service of the Notices was acknowledged by the Respondent in writing on 11 September 2023.
- v. The Property requires to be sold to fund care costs being incurred by the Applicant.
- vi. On 6 June 2023 the Applicant received a new heart valve and bypass surgery. He was due to remain in hospital after the operation for a period of 10 days but remained there for more than four months. During that period his condition was not improving and it was anticipated that significant care costs would be incurred if and when he got home. On that basis the Notice to Quit and Section 33 Notice were served.
- vii. The Applicant lives at home but requires care five days each week. The carers attend for 1 to 2 hours each day giving assistance with the Applicant's personal care, shopping, laundry etc.
- viii. The Applicant's own finances are being used to meet the care costs and these are running out. He is borrowing funds from his son and daughter.
- ix. The Applicant has no strength and it is anticipated that his condition will deteriorate further.
- x. Perth & Kinross Council contribute £160 per month towards the Applicant's personal care costs. The costs of the care being received are £300 per week.
- xi. The Applicant has three other properties that are rented. The Applicant's wife was a landlady until her death and the Applicant inherited the properties from her.
- xii. The three other properties now owned by the Applicant are family properties built in around 1880. These properties are tenanted. One of the properties is occupied by the Applicant's carer. Another of the properties is occupied by a tenant who is in their mid-70s with health issues, and the other property is tenanted by a lady who is also in her 70s and her husband who is in his 80s and who have lived there

- for around 30 years. That latter property previously belonged to the local estate and the Applicant's wife, who was philanthropic in nature, bought the property from the estate to allow the couple to continue to live there.
- xiii. No steps have been taken to sell any of the other properties owned by the Applicant at this time.
 - xiv. The Applicant has no mortgage over any of the properties.
 - xv. The Applicant lives alone.
 - xvi. The Respondent is approximately 60 years of age. He has lived in the Property with his wife for approximately 12 years. They live in the Property alone.
 - xvii. The Property has been selected for sale as it is a two bedroomed flat in Pitlochry and will sell quickly. The other three properties have more sentimental value and are in Moulin.
 - xviii. The Respondent and his wife have applied for Council accommodation.
 - xix. The Applicant served on Perth & Kinross Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

Reasons for Decision

The Respondent did not attend or have representation at the CMD. The factual background narrated by Mrs Mackay for the Applicant within the application papers and orally on his behalf at the CMD was not challenged and was therefore accepted by the Tribunal.

The Tribunal had regard to the Respondent's email of 12 August 2024 and the information contained therein relative to applications for housing made to Perth & Kinross Council.

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

The Tribunal was satisfied that the Applicant had given proper notice to the tenant that he requires 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 determined that it would be reasonable to issue an eviction order. On the basis of Mrs Mackay's representations the Applicant's available cash resources have been depleted as a consequence of having to pay care costs and he now requires to realise his heritable assets in order to generate additional funds. Whilst he has four rental properties, he has to select one to sell at this time and he has elected to sell the Property due to its likely saleability and due to the Respondent and his wife having tried to obtain local authority accommodation over a period of many years. This is a reasonable approach.

Having regard to all the circumstances the tribunal therefore determined that it is reasonable to grant an eviction order.

Decision

The Tribunal granted an eviction order 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.

Gillian Buchanan


Legal Member/Chair

26 August 2024
Date