



**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/23/3774

**Re: Property at Flat E (1/1), 15 Main Street, Thornliebank, G46 7SG (“the
Property”)**

Parties:

Mr David Sloan, Flat 6/1, 20 Partickhill Road, Glasgow, G11 5BE (“the Applicant”)

**Mrs Elizabeth Macdonald, Mr Mark Macdonald, Flat E, 15 Main Street,
Thornliebank, G46 7SG; Flat E, 15 Main Street, Thornliebank, G46 7SG (“the
Respondent”)**

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Leslie Forrest (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined to grant an order for possession on ground 33 of the
Housing (Scotland) Act 1988**

Background

1. By application dated 25th October 2023 the applicant seeks an order for eviction relying on section 33 of the Housing (Scotland) Act 1988.
2. The applicant lodged the following documents with the application
 - Copy tenancy agreement
 - AT5 receipt
 - Copy Notice to quit
 - Copy section 33 notice
 - Proof of service of notice to quit and section 33 notices

- Section 11 notice
- Email from the applicant setting out his personal circumstances dated 26th February 2024

Case management discussion – “cmd” – teleconference – 29 April 2024

3. The applicant was represented by Ms Harte, Letting Agent from Northwood (Glasgow) Ltd. The respondent, Ms MacDonald was in attendance.
4. The Tribunal noted that the tenancy agreement commenced on 9 August 2012. The initial duration had been for six months after which the lease continued on a two-month cycle. The tenancy agreement had three named tenants – Elizabeth McDonald, Mark McDonald and Scott McDonald. Ms Harte stated that Scott McDonald had left the tenancy on 8 October 2023. From that point the tenancy became a statutory assured tenancy in terms of section 16 of the Housing (Scotland) Act 1988. A notice to quit and section 33 notice had been served on the tenants on 4 August 2023 which specified that the landlord required possession as at 8 October 2023.
5. There being no dispute regarding the competency of the proceedings the Tribunal heard from parties in relation to whether it was reasonable to grant an order for eviction.
6. The Tribunal determined that it required additional information regarding the applicant’s financial and personal circumstances, and also in relation to the respondents’ physical circumstances prior to making a decision and adjourned to a further cmd for that information to be provided.

CMD – 4 September 2024 – teleconference

7. Ms Harte, the letting agent for the property attended along with Mr Sloan the applicant. Ms McDonald was in attendance. Mark McDonald the joint tenant was not present however the Tribunal was satisfied that he had been given proper notice of the cmd and proceeded in his absence.
8. **Evidence from the applicant and Ms Harte:** The applicant stated that he is 67 years old. His wife is 64 years old. The applicant had suffered a heart attack at the end of 2022 and was seeking to simplify his commitments. He explained that he was retired and had a fixed income. There was an

outstanding mortgage over the property of £75,000. The monthly repayment had increased from £140 to £448 in the past 2 years. The applicant stated the the property dated from around 1915 and there were frequent repairs bills that added to the cost of continuing to own the property, for example the applicant had recently received an invoice for £900 for a common repair. The applicant estimated that on a monthly basis the property cost him £40. The applicant confirmed that his wife is retired. She is a long-term carer for their disabled son who lives across the road from them. She also has some health concerns. The applicant explained that due to their age and the fact that he no longer wished to have the stress associated with being a landlord he wanted to sell the property. It was his intention to market the property for sale as soon as possible. Ms Harte had previously confirmed that the respondent had been a tenant since 2012. She had found her to be exemplary in her conduct as a tenant and had tried to do what she could to help the tenant in her search for alternative accommodation.. Ms Harte stated that the respondent may be able to access social housing if an order was granted.

- 9. Evidence from Ms McDonald:** Ms McDonald stated that she was being assessed for Chronic Obstructive Pulmonary Disorder (COPD). She continued to suffer from anxiety which had been greatly impacted by the present process. She advised that she had been seeking assistance from the local authority to find alternative accommodation. She explained previously that she was unable to afford alternative private rented accommodation in the area. Social housing was her only affordable option. She was also concerned that her son Mark who helped to pay the rent at present would move out at some point and therefore she needed to find accommodation that she could afford on her income. She explained that she had been awarded maximum housing points and was currently bidding for accommodation through the local authority housing allocation scheme. Ms McDonald stated that due to her health concerns she wanted to have the stability of a local authority tenancy.

Findings in fact and law

10. Parties entered into a short, assured tenancy agreement with a commencement date of 9 August 2012.

11. A valid section 33 notice was served on 4 August 2023 allowing the landlord to rely on section 33 as a ground for recovery of possession.
12. It is reasonable to grant an order for eviction.

Reasons for decision

13. The Tribunal took into account the written representations and documents lodged by parties as well as the oral evidence at both cmds.
14. The Tribunal found all parties to be straightforward and truthful and accepted their evidence in its entirety.
15. Section 33 states:

(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;

(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.

16. The Tribunal was satisfied that paragraphs (a)(b) and (d) had been complied with.
17. In relation to whether it was reasonable to make an order the Tribunal was particularly swayed by the age and personal circumstances of the applicant and his wife. They had an understandable desire to simplify their life and the applicant no longer wished to have the responsibility of being a landlord. This seemed a reasonable position. The Tribunal also gave weight to the ongoing financial loss experienced by the applicant as a result of the property and accepted that the money from the sale of the property was necessary to cover costs as the applicant and his wife moved into retirement.
18. The Tribunal noted that the respondent, Ms McDonald was actively seeking alternative accommodation which would be better suited to her health and financial circumstances. She had indicated that she understood the difficulties

faced by the landlord and was hopeful that she would be able to obtain alternative suitable accommodation.

19. Taking into account the above factors the Tribunal was most persuaded by the impact of not granting an order on the applicant and determined that it was reasonable to grant an order for eviction.

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.

Legal Member:

Date: 04 September 2024

Mary-Claire Kelly