



**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/24/0028

Re: Property at 14 Hillview Avenue, Kilsyth, Glasgow, G65 0DJ (“the Property”)

Parties:

**Mr James McKechnie, 15 Hayston Road, Carrickstone, Cumbernauld, G68 0BS
 (“the Applicant”)**

**Mr Fergus Patterson, 14 Hillview Avenue, Kilsyth, Glasgow, G65 0DJ (“the
 Respondent”)**

Tribunal Members:

Sarah O'Neill (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
 Tribunal”) determined that an order for recovery of possession should be
 granted in favour of the applicant.**

Background

1. An application was received on 4 January 2024 under rule 66 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’) seeking recovery of possession of the property under a short assured tenancy by the applicant against the respondent.
2. Attached to the application form were:
 - (i) The short-assured tenancy agreement between the parties which commenced on 25 June 2015.
 - (ii) Copy notice required under section 33 of the 1988 Act (‘the section 33 notice’) dated 13 October 2023 and addressed to the respondent.

- (iii) Copy Notice to Quit dated 13 October 2023 addressed to the respondent, requiring him to remove from the property on or before 25 December 2023.
 - (iv) Royal Mail proof of delivery relating to the Notice to Quit and section 33 notice, confirming that they had been signed for on 14 October 2023.
 - (v) Copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 to North Lanarkshire Council with proof of receipt dated 4 January 2024.
 - (vi) Email dated 20 February 2023 from R and G Estate Agents to the respondent regarding the proposed sale of the property.
3. On 1 February, a copy form AT5 addressed to the respondent dated 15 June 2015 was received from the applicant.
 4. The application was accepted on 1 March 2024.
 5. Notice of the case management discussion, together with the application papers and guidance notes, was served on the respondent by sheriff officers on behalf of the tribunal on 19 July 2018.
 6. The respondent was invited to submit written representations to the tribunal by 8 August 2024. No written representations were received from him prior to the case management discussion.

The case management discussion

7. A case management discussion (CMD) was held by teleconference call on 21 August 2024. The applicant was present on the teleconference call and represented himself. The respondent was not present or represented on the teleconference call. The tribunal delayed the start of the CMD by 10 minutes, in case the respondent had been detained. He did not attend the teleconference call, however, and no telephone calls, messages or emails had been received from him.
8. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date and time of a CMD had been duly complied with. The tribunal therefore proceeded with the CMD in the absence of the respondent.

The applicant's submissions

9. The applicant asked the tribunal to grant an order in his favour against the respondent for recovery of possession of the property.

10. He told the tribunal that he is now 71 years old and his wife is 76. They now wish to retire from their business as landlords. He had previously rented out six properties in total, including this one. He has now sold four of these properties, and the remaining property was currently on the market. He requires to sell the property to help fund his retirement. He is unable to retire until he has sold the remaining properties, and is keen to retire as soon as possible. The applicant said that he had tried to keep the rents low for his tenants during the cost of living crisis, and that he had not earned enough money from renting out his properties last year to pay tax.
11. He had previously attempted to find a buyer who would buy the property with the respondent remaining as tenant. He had started the process of selling his portfolio of all six properties to a company, but had decided not to proceed with this as he would be losing money given the sum they had offered. He was now keen to sell the property as quickly as possible.
12. When asked by the tribunal about the respondent's circumstances, the applicant said that the respondent lives in the property alone. He is also 71 years old and works part-time. He had a good relationship with the respondent who had been a good tenant and had always paid the rent. He did not believe that the respondent has any major health issues.
13. The applicant expressed regret that he must evict the respondent from the property, given his age and that fact that he had been a good tenant. He said that the respondent had been offered a property recently by North Lanarkshire Council, but that it had not been suitable for him. He said he had contacted local housing associations on the respondent's behalf and expressed confidence that the respondent would be able to secure another property to live in.

Findings in fact

14. The tribunal made the following findings in fact:
 - i. The applicant owns the property jointly with his wife Mrs Helen McKechnie.
 - ii. The applicant is the landlord named in the short-assured tenancy agreement between the parties.
 - iii. The applicant is the registered landlord for the property, and his wife Mrs Helen McKechnie is registered as a joint owner.
 - iv. The applicant's wife had confirmed to the tribunal in writing that she authorised the applicant to conduct the proceedings before the tribunal.
 - v. There was a short-assured tenancy in place between the applicant and the respondent. The tenancy commenced on 25 June 2015 for an initial period of 6 months, continuing on a month to month basis thereafter.

- vi. The rent at the start of the tenancy was £430 per month and is currently £470 per month, having been increased on one occasion.
- vii. The form AT5 was in the prescribed format and the short-assured tenancy agreement between the parties was validly constituted.
- viii. The tenancy agreement provided that either party could terminate the tenancy by providing two months' notice.
- ix. The Notice to Quit and the section 33 notice contained the prescribed information and both were dated 13 October 2023. These notices stated that the applicant required vacant possession of the property on or before 25 December 2023.
- x. The tenancy therefore reached its end on 25 December 2023.
- xi. The Notice to Quit and section 33 notice had been served on the respondent by recorded delivery on 13 October 2023 and signed for by the respondent on 14 October 2023, providing more than two months' notice of vacant possession.
- xii. The respondent is still resident in the property and lives alone there.

Reasons for decision

15. The tribunal considered that in the circumstances, it was able to make a decision at the CMD without a hearing as 1) having regard to such facts as were not disputed by the parties, it was able to make sufficient findings to determine the case and 2) to do so would not be contrary to the interests of the parties.

16. The tribunal noted that section 33 (1) of the 1988 Act as amended by the 2020 Act 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;

(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.

17. The tribunal was satisfied that the short-assured tenancy agreement between the parties had been validly constituted, and that the Notice to Quit and section 33 notice had been correctly served. It was also satisfied that the short-assured tenancy had reached its end; that tacit relocation was not operating; and that the notices had been validly served on the respondent.

18. The tribunal then considered whether it was reasonable to make an order for recovery of possession. In doing so, it took into account all of the circumstances of the case.
19. The tribunal found the applicant to be credible and honest in outlining his situation to the tribunal. It noted his age and that of his wife, and their desire to retire and sell the property. The tribunal also noted that the applicant appeared to be a reasonable landlord, having kept the rent low, and that he had previously tried unsuccessfully to sell the property with the respondent in situ.
20. The tribunal also took into account what the applicant said about the respondent's circumstances. In the absence of written representations from the respondent or any appearance by him at the CMD, the information available to the tribunal was unfortunately limited. It noted the respondent's age, the fact that he lives alone, that he is still working and does not appear to have any particular health issues.
21. The tribunal had sympathy with both parties and recognised that the issues in this case were finely balanced. In weighing up all of the circumstances, the tribunal noted the respective ages and circumstances of the parties, as set out above.
22. The tribunal also noted that the applicant and his wife as owners of the property have a legal right to use and dispose of it as they see fit, within the confines of the law. It also noted that at the start of the short assured tenancy, given the rules that were in place at that time, the applicant might have expected to be granted an eviction order automatically if the tribunal was satisfied that the applicant had followed the correct rules in terms of creating the tenancy and serving the various notices correctly. The tribunal also noted that the notice to quit had been sent to the respondent on 13 October 2023, more than 10 months ago. He had therefore been aware for some time that the applicant sought to repossess the property.
23. The tribunal took the view that given his age, the respondent was likely to be given priority for local authority housing, noting that he had already been offered housing by the local authority.
24. Having carefully considered all of the evidence and all of the circumstances of the case as set out above, the tribunal considered that on balance it was reasonable to grant an eviction order. The tribunal therefore determined that an order for recovery of possession should be granted in favour of the applicant.

Decision

The tribunal grants an order in favour of the applicant against the respondent for recovery of possession of the property.

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.

Sarah O'Neill

21 August 2024

Legal Member/Chair

Date