



**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/24/0712**

**Re: Property at 111 Smithyends, Cumbernauld, G67 2SJ (“the Property”)**

**Parties:**

**Mr Gordon Bruce McKay, 52 Muirfield Terrace, Gullane, EH31 2HW (“the Applicant”)**

**Mrs Gillian Oliver or Rae, 111 Smithyends, Cumbernauld, G67 2SJ (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Gordon Laurie (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order, with enforcement of the order suspended for a period of two months.**

**Background**

- 1 By application to the Tribunal dated 13 February 2024 the Applicant sought an eviction order against the Respondent in respect of the Property under section 33 of the Housing (Scotland) Act 1988. In support of the application the Applicant provided the following documentation:-
  - (i) Short Assured Tenancy Agreement between the Applicant and the Respondent dated 5 May 2008 together with Form AT5;
  - (ii) Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988 dated 6 December 2023 together with proof of service by recorded delivery dated 8 December 2023; and

(iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to North Lanarkshire Council together with proof of service by email.

2 By Notice of Acceptance of Application a Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned and a copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers.

### **Case Management Discussion**

3 The Case Management Discussion took place by teleconference on 12 August 2024. The Applicant was represented by Samantha Frazer of Lothian Homes for Let. He himself was not present. The Respondent was in attendance and accompanied by her son Alan Rae.

4 The Tribunal explained the purpose of the Case Management Discussion and the legal test and invited parties to make submissions. For the avoidance of doubt the following is a summary of the submissions made and does not constitute a verbatim account of the discussion.

5 Ms Frazer advised that she did not manage the property for the Applicant but he had asked her to assist with the Tribunal proceedings as he was keen to sell the property. It was currently running at a loss due to increased mortgage costs. Ms Frazer advised that the Applicant had a mortgage over the property, the term of which was due to expire at the end of the year. He could not afford to renew it and would financially struggle if he couldn't sell. Ms Frazer confirmed that Lothian Homes for Let managed one other property for the Applicant, which he also had plans to sell. Ms Frazer advised that the property was jointly owned by the Applicant and his father Robert McKay who did not have anything to do with the management side of things.

6 Ms Rae spoke to the Tribunal, with assistance from her son. She advised that her circumstances had changed in that she and her son were now disabled. Ms Rae advised that following surgery her son was bedridden and unable to walk. Ms Rae herself had trouble walking, therefore the stairs in the property presented an issue. Ms Rae advised that she had a good relationship with the Applicant and she was not contesting the application. She understood he was in a difficult position. Mr Rae confirmed that his mother had approached the Council to make a homelessness application and they had been placed on the local housing register. They had been told that their application had a lot of points due to their circumstances however they had not yet received any offers of housing, or any further contact. Mr Rae advised that they had been told that the process may be expedited following the granting of an eviction order.

7 In response to questions from the Tribunal Mr Rae confirmed that his mother was 56 years old, he was 34 and his 15 year old daughter also resided in the property. She attended the local school. Mr Rae confirmed that the local authority had told them that their application would be given priority if an eviction

order was granted. They would be looking for ground floor properties given their circumstances, with some adaptations for support. Mr Rae confirmed that property had been originally owned by his mother's ex-husband Allan Oliver however he had incurred debts and the property was sold to the Applicant.

- 8 The Tribunal noted that, in the event of making an eviction order, it had the option to suspend enforcement of the order for a period of time to allow the tenants further time to vacate. Ms Frazer advised that she would have no difficulty with this. The Applicant was keen to get the property on the market but he did have a good relationship with the Respondent and her family. He wanted the best for them, as well as himself.
- 9 The Tribunal then held a short adjournment to discuss the submissions heard during the discussion before resuming and confirming its decision.

### **Relevant Legislation**

- 10 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Housing (Scotland) Act 1988, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

#### ***“33 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; and*

*(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 six months, that period;*

*(ii) in any other case, six 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 finish 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 and Law**

- 11 The Applicant entered into a short assured tenancy with the Respondent dated 5 May 2008. The term of the tenancy was 12 May 2008 to 11 May 2009 and monthly thereafter.
- 12 The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 13 On 8 December 2023 the Applicant served a notice to quit and notice under section 33(1)(d) of the Housing (Scotland) Act 1988 on the Respondent. Said notice to quit terminated the contractual tenancy as at 12 February 2024. The notice under section 33(1)(d) stated that proceedings for possession could be sought after that date.
- 14 The Applicant requires vacant possession of the property in order to sell it. The Applicant has a mortgage over the property and is running at a loss. The Applicant's mortgage term will expire at the end of 2024 and the Applicant will be unable to renew his mortgage. The Applicant will be in financial difficulties if he cannot sell the property.
- 15 The property was previously owned by the Respondent's ex-husband. The property was sold to the Applicant as a result of debt consolidation to repay debts owed by the Respondent's ex husband.
- 16 The Respondent resides in the property with her son, aged 34, and his daughter, aged 15. The Respondent is 56 years old.
- 17 The Respondent and her son are disabled.. The Respondent's son is bedbound and unable to walk. The Respondent struggles with the stairs at the property.
- 18 The Respondent has applied for housing with the local authority. The Respondent's application has been allocated a number of points as a result of the Respondent's circumstances, and her son's circumstances. The making of an eviction order will result in the local authority giving additional priority to the application.
- 19 The Respondent does not object to the making of an eviction order. The Respondent wishes to move to alternative accommodation more suited to the needs of herself and her son.

## Reasons for Decision

- 20 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved. It was clear that the parties maintained a good relationship, and had done for some time.
- 21 The Tribunal accepted that the Respondent had been served with a valid notice to quit which terminated the tenancy as at 12 February 2024, along with a notice under section 33(1)(d) of the Housing (Scotland) Act 1988. The issue for the Tribunal to determine therefore was whether it was reasonable in all the circumstances to grant an eviction order.
- 22 The Tribunal accepted the Applicant's reason for terminating the tenancy, which were credible and genuine. They were not disputed by the Respondent. The Tribunal believed that the Applicant was in a situation where he required to sell the property due to the rise in mortgage costs and the ongoing loss he was incurring, which would only worsen with the imminent end of the mortgage term. The Tribunal also had regard to the Respondent's personal circumstances, noting that both she and her son were vulnerable due to their health issues. That was a significant concern. However it was balanced by the fact that the Respondent and her son were clearly keen to move on from the property, and into accommodation that would be more suited to their needs. They had sought assistance from the local authority in that regard, and the Tribunal was aware, based on its own knowledge of the homelessness application process which had been confirmed by Mr Rae, that the granting of an eviction order would likely assist in prioritising their application for housing.
- 23 However the Tribunal was cognisant of the potential challenges in finding a property that would be suitable for the Respondent's family in light of their aforementioned medical needs. The Tribunal therefore concluded that it would be reasonable to make an eviction order, with the order suspended for a period of two months to assist the Respondent and the local authority in sourcing her a suitable home.
- 24 The decision of the Tribunal was unanimous.

## 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.

# R.O'Hare

13 August 2024

Legal Member/Chair

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Date