



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/24/1343

Re: Property at 18 Herdmanflatt, Haddington, EH41 3LW (“the Property”)

Parties:

Mrs Margaret Gillian Glass, 59 Davidson Terrace, Haddington, EH41 3BD (“the Applicant”)

Ms Gail McCulloch, 18 Herdmanflatt, Haddington, EH41 3LW (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order.

Background

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondents in respect of the Property under section 33 of the Housing (Scotland) Act 1988. In support of the application the Applicants provided the following documentation:-
 - (i) Short Assured Tenancy Agreement between the Applicant and the Respondent dated 21 February 2012 together with Form AT5;
 - (ii) Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988 dated 11 December 2023 together with certificate of service by Sheriff Officers dated 13 December 2023; and

- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to East Lothian 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.
- 3 On 5 August 2024 the Tribunal received an email from Mark Coull, Advocacy Services Coordination of Haddington Citizens Advice Bureau with a mandate from the Respondent authorising him to represent her at the Case Management Discussion.

Case Management Discussion

- 4 The Case Management Discussion took place by teleconference. The Applicant was in attendance. The Respondent was represented by Mr Coull.
- 5 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.
- 6 Mrs Glass advised that she was intending on selling the property due to a change of circumstances. She had faced financial pressures due to taking care of her father and mother, who both suffered from dementia. The stress of the situation had led to her having a nervous breakdown and she could not go back to work. This was the only property she let, she was not a professional landlord.
- 7 Mr Coull explained that the Respondent had no objection to the application. She was in part time employment and did not foresee any eviction causing issues with her sustaining that work. Mr Coull confirmed that he was supporting the Respondent with other matters to do with benefits and she would continue to receive his support on that front. Mr Coull advised that the Respondent resided with her 16 year old daughter who would continue to attend the local school. Eviction would not hinder her education as she would be able to reside with her grandmother who lived in the local area, if required. The Respondent understood the implications of an eviction order being granted and wanted to state that it would not cause any hardship. She had the support of a housing officer who was in position to assist with a housing application and she was fully aware of the application process. In response to questions from the Tribunal Mr Coull confirmed the Tribunal's view that the making of an eviction order would likely assist the Respondent in terms of prioritising her application for housing, albeit the Respondent was aware that she may be offered temporary accommodation in the short term. Mr Coull further advised that the Respondent and her daughter had experienced antisocial behaviour at the property and that

this was further motivation for them to leave. It would help them make a fresh start. Mr Coull wished to state that there was no fault on the part of the landlord.

Relevant Legislation

- 8 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

- 9 The Applicant entered into a short assured tenancy with the Respondent dated 21 February 2012. The term of the tenancy was 1 March 2012 to 28 February 2012.
- 10 The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 11 On 13 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 28 February 2024. The notice under section 33(1)(d) stated that proceedings for possession could be sought after that date.
- 12 The Applicant requires vacant possession of the property in order to sell it. The Applicant is currently unemployed following a nervous breakdown. The Applicant requires to provide care for her father who suffers from dementia. The sale of the property will assist the Applicant with financial support.
- 13 The Respondent resides in the property with her daughter, aged 16.
- 14 The Respondent is in part time employment and receiving support with benefits from the Citizens Advice Bureau. The Respondent's employment will not be adversely affected should she have to remove from the property.
- 15 The Respondent's daughter attends a local school. The Respondent's daughter will likely reside with her grandmother who lives in the local area in order to continue her education, which will not be adversely affected should the Respondent have to remove from the property.
- 16 The Respondent is receiving assistance from a housing officer with an application for social housing. The making of an eviction order will likely assist the Respondent in progressing her application.
- 17 The Respondent does not wish to remain in the property.

Reasons for Decision

- 18 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.
- 19 The Tribunal accepted that the Respondent had been served with a notice to quit which terminated the tenancy as at the ish date of 28 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.

- 20 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 she required the financial benefit that the sale of the property would bring due to the circumstances surrounding the care of her father, and her own health issues. The Tribunal also had regard to the Respondent's personal circumstances, noting that Mr Coull had unequivocally stated in that an eviction order would not adversely affect the Respondent's employment, nor her daughter's education. The Respondent had clearly sought advice and was receiving ongoing support with her benefits and her housing. It was evident that she did not wish to remain in the property and was seeking a secure tenancy elsewhere. The Tribunal was aware, based on its own knowledge of the homelessness application process, that the granting of an eviction order would likely assist in prioritising her application for housing.
- 21 The Tribunal therefore concluded that it would be reasonable in the particular circumstances of this case to make an eviction order.
- 22 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.

Ruth O'Hare

10 August 2024

Legal Member/Chair

Date