



**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/24/1591

**Re: Property at Honeysuckle Cottage, Carlungie, CARNOUSTIE, DD7 7SD (“the
Property”)**

Parties:

**Clova Farms Limited, Westby, 64 West High Street, FORFAR, DD8 1BJ (“the
Applicant”)**

**Neil Clark, Honeysuckle Cottage, Carlungie, CARNOUSTIE, DD7 7SD (“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, with enforcement of the order
suspended for a period of three months.**

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 Sarah Meek dated 30th June and 8th July 2011 together with Form AT5;
 - (ii) Notice under section 33 of the Housing (Scotland) Act 1988 dated 23rd November 2023 together with certificate of service by Sheriff Officers dated 24th November 2023;

- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Angus Council together with proof of service by email; and
 - (iv) Title Sheet ANG13917.
- 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. The Applicant was represented at the Case Management Discussion by Mr Rhuari Peoples of Turcan Connell Solicitors. He was accompanied by his colleague Jennifer McKay as an observer. The Respondent was also in attendance.
- 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 Mr Peoples confirmed that the Applicant sought an order for possession. The Respondent was not a party to the original short assured tenancy agreement, which had been terminated by the death of Sarah Meek on 12th November 2016. Tacit relocation had therefore ceased and the contractual tenancy terminated as at that date. The Respondent had occupied the tenancy with Ms Meek and therefore succeeded to a statutory assured tenancy in terms of section 31 of the 1988 Act. A section 33(1)(d) notice had been served upon the Respondent in November last year to give notice of the landlord's intentions to recover possession of the property.
- 6 Mr Peoples proceeded to make submissions on the reasonableness of making an eviction order. He advised that the Respondent had been given to date around 8 months notice. That was a lengthy period that would allow him to make alternative accommodation arrangements. The Tribunal also had the discretion to suspend enforcement of the order if it so wished. Mr Peoples advised that the Applicant intended on carrying out substantial renovations to the property and required possession in order to do so. The Applicant anticipated that the works would be significant and disruptive, and would include works to the roof. The property was aged and appeared to date back to 1892. The Applicant was considering demolition and rebuilding as one of the options. The Applicant was considering the use of the property as staff accommodation for workers on his farm. In response to questions from the Tribunal Mr Peoples confirmed that the Applicant took title to the property in 2021 and took on the landlord's interest in the tenancy.

- 7 The Respondent advised that he had been to Dundee City Council to make an application for housing. He had provided them with the application paperwork and they had requested a copy of the tenancy agreement, but he explained that he didn't have one. The Respondent was aware that the Applicant had sold other properties on the land to someone who was renovating them so he didn't think that the Applicant would be using the property for staff accommodation. The Respondent confirmed that he had sought advice from the Citizens Advice Bureau and from Shelter Scotland. His partner had died in 2016 and he himself had stayed in the property for around 14 years. The Respondent confirmed that he did not object to the eviction order, he was simply seeking more time to get another house. The Respondent confirmed that he was 54 years old and suffered with COPD and sciatica, as well as a slipped disc. The Respondent confirmed that he wished to move out of the property and into social rented housing in Dundee. He needed time however for the Council to process his application.

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:-

31 Right of succession of spouse.

(1) In any case where—

(a) the sole tenant under an assured tenancy dies; and

(b) immediately before the death the tenant's spouse or civil partner was occupying the house as his or her only or principal home; and

(c) the tenant was not himself a successor as explained in subsection (2) or (3) below,

the tenant's spouse or civil partner shall, as from the death and for so long as he or she retains possession of the house without being entitled to do so under a contractual tenancy, be entitled to a statutory assured tenancy of the house.

(2) For the purposes of this section, a tenant was a successor in relation to a tenancy—

(a) if the tenancy had become vested in him either by virtue of this section or under the will or intestacy of a previous tenant; or

(b) if he was a statutory assured tenant by virtue of section 3A of the Rent (Scotland) Act 1984; or

(c) if at some time before the tenant's death the tenancy was a joint tenancy held by him and one or more other persons and, prior to his death, he had become the sole tenant by survivorship; or

(d) in the case of a tenancy (hereinafter referred to as "the new tenancy") which was granted to him (alone or jointly with others) if—

(i) at some time before the grant of the new tenancy he was, by virtue of paragraph (a), (b) or (c) above, a successor to an earlier tenancy of the same or substantially the same house as is let under the new tenancy; and

(ii) at all times since he became such a successor he has been a tenant (alone or jointly with others) of the house which is let under the new tenancy or of a house which is substantially the same as that house.

(3) No order for possession under Ground 7 of Schedule 5 to this Act shall be made—

(a) in relation to a case to which this section relates by virtue of subsection (1) above; or

(b) where the tenant's spouse or civil partner succeeds to the tenancy under the will or intestacy of the tenant.

(4) For the purposes of this section a person who was living with the tenant at the time of the tenant's death .

(a) as his or her wife or husband shall be treated as the tenant's spouse

(b) in a relationship which had the characteristics of the relationship between civil partners shall be treated as the tenant's civil partner.

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 end;

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 Sarah Meek dated 30th June and 8th July 2011. The term of the tenancy was 8th July 2011 to 7th July 2013, and monthly thereafter.
- 10 The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 11 Sarah Meek passed away on 12th November 2016.
- 12 The Respondent was the civil partner of Sarah Meek. The Respondent occupied the property as his principal home at the time of her death.
- 13 On 24th November 2023 the Applicant served a notice under section 33(1)(d) of the Housing (Scotland) Act 1988 on the Respondent. Said notice confirmed that the landlord intend to seek possession of the house and that proceedings for possession could be raised after 30th January 2024.
- 14 The Applicant requires vacant possession of the property in order to renovate it. The works required will be significant and disruptive, and may include the demolition of the property.
- 15 The Respondent is 54 years old. The Respondent suffers with chronic obstructive pulmonary disease, sciatica and a slipped disc.

- 16 The Respondent wishes to move out of the property and into social rented housing in Dundee. The Respondent has applied to the local authority for housing.

Reasons for Decision

- 17 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.
- 18 The Tribunal accepted that, in terms of section 31 of the 1988 Act, the Respondent had succeeded to a statutory assured tenancy following the death of his partner. The contractual tenancy held by his partner had reached its end as at 12th January 2016. As no contractual tenancy was in place, tacit relocation was not operating and there was no requirement for a Notice to Quit. The Tribunal was further satisfied that the Respondent had been served with a valid 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.
- 19 The Tribunal accepted the Applicant's reason for terminating the tenancy, namely his intention to renovate what appeared to be a historic property. The Tribunal found it believable that the property would likely require significant work which would be disruptive to any occupants. The Tribunal also had regard to the Respondent's personal circumstances, noting that he was vulnerable due to his health issues. There were however no dependents who would be a risk were an eviction order to be granted. The Tribunal also gave weight to the fact that the Respondent wished to move from the property and into secure housing in Dundee. He 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, that the granting of an eviction order would likely assist in prioritising his application for housing.
- 20 However the Tribunal was cognisant of the Respondent's request for additional time to source accommodation which it considered appropriate given the length of time he had resided in the property, and his aforementioned health issues. The Tribunal therefore concluded that it would be reasonable to make an eviction order, with the order suspended for a period of three months to assist the Respondent and the local authority in sourcing him a suitable home.
- 21 The Tribunal therefore determined to make an eviction order. 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

10 August 2024

Legal Member/Chair

Date