



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/24/1640

Re: Property at 43 Annfield Court, Macmerry, EH33 1PN (“the Property”)

Parties:

Mr Garry Inglis, 16 Erskine Road, Gullane, East Lothian, EH31 2DQ (“the Applicant”)

Mr Alan Reid and Mrs Paula Reid, 43 Annfield Court, Macmerry, EH33 1PN (“the Respondents”)

Tribunal Members:

Martin McAllister (Legal Member) and Helen Barclay (Ordinary Member) (“the tribunal”)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent be granted an order for possession of the Property.

Background

- 1. This is an application under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”) for recovery of possession of the Property. It is dated 11 April 2024.**
- 2. The application was accepted for determination on 3 May 2024.**

Case Management Discussion

- 3. A case management discussion was held by teleconference on 22 August 2024.**

4. The Applicant was not present and was represented by Ms Nicky Brechany, solicitor.
5. The Respondents were present.

Preliminary Matters

6. The legal member explained the purpose of a case management discussion.
7. Ms Brechany said that the application had been necessary because the Respondent had not removed himself from the Property by 3 April 2024 and was still residing in it.
8. Ms Brechany submitted that the tribunal had sufficient information to determine the application and that there was no other evidence which the Applicant could bring before a Hearing.
9. Mrs Reid said that she and her husband were not contesting the application which had been submitted and that they would have no additional information or evidence which they would want to be considered at a Hearing.

10. Findings in Fact

- 10.1 The Applicant and the Respondent are parties to a short assured tenancy agreement in respect of the Property dated 21 March 2013.
- 10.2 The term of the tenancy was 2 April 2013 to 3 October 2013 (both dates inclusive).
- 10.3 The tenancy agreement provided for the tenancy to continue on a month to month basis if it was not brought to an end on 3 October 2013.
- 10.4 The Applicant served a Section 33 Notice and a Notice to Quit on the Respondent on 2 February 2024 requiring vacation of the Property by 3 April 2024.
- 10.5 The Respondent remains in occupation of the Property.
- 10.6 The required notice in terms of the Homelessness etc. (Scotland) Act 2003 has been given to the local authority.

11. Findings in Fact and Law

- 11.1 The tenancy continued by tacit relocation from 3 October 2013 until it was brought to an end by service of the Notice to Quit on 2 February 2024.**
- 11.2 The tenancy ended on 3 April 2024.**
- 11.3 The Applicant is entitled to recover the Property because the tenancy has been brought to an end.**
- 11.4 It is reasonable for the order of eviction to be granted.**

Documents

12. The Tribunal considered the documents which had been lodged with the application:

- 12.1 Copy of the short assured tenancy agreement dated 21 March 2013.**
- 12.2 AT5 Form relating to the short assured tenancy.**
- 12.3 Notice to Quit and served on 2 February 2024 requiring the Respondent to leave the Property by 3 April 2024.**
- 12.4 Section 33 Notice served on 2 February 2024.**
- 12.5 Sheriff Officer's certificate of citation in respect of service of the Notice to Quit and Section 33 Notice.**
- 12.6 Copy of Notice to local authority under Section 11 of the Homelessness etc (Scotland) Act 2003.**

Applicant's Position

13. Ms Brechany said that the Applicant was seeking recovery of the Property in terms of Section 33 of the Housing (Scotland) Act 1988. She said that the lease had continued on a month to month basis from 3 October 2013 and that the Applicant had sought to regain possession of the Property as at 3 April 2024 by serving a notice to quit on 2 February 2024. She said that 3 April 2024 was an ish date and that the tenancy finished on that date.

14. Ms Brechany said that the tribunal had copies of the Notice to Quit, Section 33 Notice, evidence of service of the documents and the Section

11 Notice which had been sent to the local authority. She said that the technical aspects of recovery of possession had been satisfied and that the appropriate notice period had been given. She said tacit relocation is not operating and that the tenancy had finished. She said that the requirements of Section 33 of the Act had been met.

15. Ms Brechany said that the Applicant is retired and owns one other buy to let property. She said that the rent for the Property has not been increased since the start of the tenancy. It is £695 per month and the Applicant's mortgage repayment is £540.96 per month. She said that, because of taxation and other expenses, continuation as a landlord is not viable for the Applicant. He is not making a profit. Ms Brechany said that, on recovery of the Property, the Applicant intends to carry out some works and put it on the market.

16. Ms Brechany said that the Applicant had approached the Respondents about increasing the rent but that they were not able to do so because it was unaffordable for them.

17. Ms Brechany said that the Applicant is aware that the Respondents have tried to get alternative housing but have been unable to find anything. She said that they are on the local authority housing list but that they are not considered a priority until an eviction order is granted.

18. Ms Brechany said that, in all the circumstances, it is reasonable for the Applicant to achieve recovery of the Property.

Respondents' Position

19. Mrs Reid said that she did not disagree with anything which Ms Brechany had said.

20. Mrs Reid said that a rent increase was not affordable for she and her husband. She said that they have tried to find alternative accommodation but had been unable to do so. She said that they have

two pet dogs which limits the number of private lets available and that those which are available are not affordable.

21. Mrs Reid said that she had been in touch with the local authority and that it is aware of their situation and the application for eviction.

22. Mrs Reid said that she and her husband work and that their two sons live with them in the Property. One is aged 18 and is at Edinburgh College and the other is aged 12 and attends Tranent High School. She said that no members of the family living in the Property have mobility issues although her younger son receives support for dyslexia and has some anxiety issues.

23. Mrs Reid said that the Respondents accept that the Applicant wants to recover the Property.

The Law

Section 33 Housing (Scotland) ACT 1988

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 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.

(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 two months, that period;

(ii) in any other case, two 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.

Discussion and Determination

24. The tribunal determined that the Applicant had properly served the notice to quit, that the Respondents had been given the appropriate period of notice and that the appropriate notice had been given to the local authority in terms of the Homelessness etc (Scotland) Act 2003.

25. The tribunal determined that the tenancy had been brought to an end at the ish date by service of the notice to quit and that the requirements of Section 33 (1) of the 1988 Act had been met.

26. The tribunal noted that, prior to the amendments to the 1988 Act, it would have no discretion and would have been required to grant the order of eviction. By virtue of the amendments to the 1988 Act, the tribunal does have discretion and requires to consider reasonableness.

27. The tribunal did not consider that either party had additional evidence to put before it and that there was therefore no reason to arrange for an evidential Hearing to be arranged.

28. The tribunal accepted that the Applicant had good reason to seek recovery of the Property and that financially it did not make sense for him to continue letting it for the current rent. It noted that attempts had been made to get approval of the Respondents for increase of the rent.

29. The tribunal accepted that the Respondents had made efforts to get alternative accommodation and it understood the difficulties in them doing so because of the limited availability of private lets and the fact that they do not have sufficient priority on the local authority housing list.

30. The tribunal noted the personal circumstances of the Respondents and their family. They have two sons living at home, both of whom are still in education. It has been their family home for more than eleven years.

31. The tribunal carried out a balancing exercise between the Applicant's reasons for recovery of the Property and the personal circumstances of the Respondents. It determined that it was reasonable to grant the order of 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.

Martin McAllister

**Legal Member
22 August 2024**