



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/24/2255

Re: Property at 22 Admiral's View, Westhill, Inverness, IV2 5GW (“the Property”)

Parties:

Miss Angela McOwan, Hilton, Lochloy Road, Nairn, IV12 5AF (“the Applicant”)

Mr Marcus Bain, Ms Marta Smirrow, 22 Admiral's View, Westhill, Inverness, IV2 5GW (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondents)

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

Background

1. By application dated 15 April 2024 the applicant seeks an order for eviction relying on section 33 in the Housing (Scotland) Act 1988.
2. The applicant lodged the following documents with the application:
 - Copy short assured tenancy agreement
 - Copy notice to quit with proof of service
 - Copy section 33 notice
 - Copy “section 11” notice lodged with Highland Council.
3. A case management discussion (“cmd”) was assigned for 3 October 2024.
4. Prior to the cmd the respondent Mr Bain emailed the Tribunal on 29 August 2024 stating that he and his partner, Ms Smirrow would be unable to attend the

scheduled Tribunal. In response to an email from the Tribunal enquiring whether he sought a postponement of the cmd Mr Bain emailed the Tribunal on 4 September 2024 stating that the respondents did not wish to oppose the application.

Case management discussion – 3 October 2024 -teleconference

1. The applicant attended on her own behalf. The respondents were not present or represented. The Tribunal was satisfied that the respondents had received proper notice of the cmd and proceeded with the cmd in their absence in terms of rule 29.
2. Ms McOwan sought an order for eviction. She confirmed that the respondents occupied the property under the tenancy agreement which had been lodged with the application which commenced on 24 March 2013. She advised that there had been no issues with the tenants' conduct during the tenancy period. She explained that due to increases in the costs associated with the property, in particular an increase in the amount of mortgage interest payable, the tenancy was no longer economically viable. She stated that the outlays associated with the tenancy were greater than the income. Ms McOwan stated that she sought an eviction order as she wished to sell the property. She stated that it was her intention to sell the property as soon as possible due to the cost of the outlays associated with it. She stated that she did not own any other rental properties.
3. Ms McOwan stated that she had discussed the eviction proceedings with Mr Bain. She stated that as far as she was aware the respondents had sought assistance from the local authority and it was hoped that alternative accommodation would be provided to the respondents in the event that they became homeless but that the local authority would take no action unless an order for eviction had been granted. Ms McOwan advised that Mr Bain had health issues. The tenancy property was a 3 bedroom property with the bathroom upstairs. Due to health issues she stated that Mr Bain did not use the upstairs bathroom and the property was unsuitable for his needs.

4. Ms McOwan stated that the respondents were in a relationship however, as far as she was aware there were no dependent children living with them.

Findings in fact and law

5. Parties entered into a short assured tenancy agreement with a commencement date of 24 March 2013.
6. A valid section 33 notice and notice to quit were served on the respondents specifying that the applicant required vacant possession of the property on 15 January 2024.
7. The respondents continue to reside in the property.
8. The financial outlays associated with the property are greater than the income generated from rent.
9. It is reasonable to grant an order for eviction.

Reasons for the decision

10. The Tribunal had regard to the application and the documents lodged by the applicant. The Tribunal also took into account Ms McOwan’s submissions at the cmd and the emails submitted by Mr Bain in advance of the cmd. The Tribunal considered that it had sufficient information to make a decision in relation to the application.
11. Section 33 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.

12. The Tribunal determined that the service of the notice to quit and section 33 notice by the applicant satisfied the requirements of section 33(1)(a),(b) and (d).
13. In relation to the question of reasonableness the Tribunal accepted the evidence provided by Ms McOwan in full. The Tribunal found her to be straightforward and truthful and had no reason to doubt the information which she provided.
14. The Tribunal gave weight to the fact that Ms McOwan sought an order for repossession due to the financial impact the property was having on her. The increased outlays were greater than the income from the property which was having a negative impact on her finances. The Tribunal accepted that she intended to sell the property.
15. The Tribunal took into account the information provided by Ms McOwan relating to Mr Bain's health concerns but gave greater weight to the fact that the respondents had not taken any steps to oppose the application or lodge a defence. The Tribunal also gave weight to the email received from the respondents in terms of which they stated that they did not wish to oppose the application.
16. In the foregoing circumstances the Tribunal determined that it was reasonable to grant an order for eviction.

Decision

The Tribunal determined to grant an order for 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.

M C Kelly

3rd October 2024

Legal Member/Chair

Date