



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 Housing (Scotland) Act 1988 (“the 1988 Act”)

Chamber Ref: FTS/HPC/EV/23/4210

Property at 10 Oakgrove, Airdrie, ML6 8GF (“the Property”)

Parties:

Mrs Margaret Myra Mitchell, Drumclaph House, 11 Meaghy Road, CASTLEDERG, County Tyrone, BT81 7NX (“the Applicant”)

Ms Karen McLean, 10 Oakgrove, Airdrie, ML6 8GF (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Leslie Forrest (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondent in favour of the Applicant. The Tribunal also determined that an order delaying the execution of the order should be issued.

Background

- 1. The Applicant seeks an order for possession in terms of Section 33 of the 1988 Act. A tenancy agreement, AT5 Notice, Notice to Quit, Section 33 Notice, evidence of posting and a Section 11 Notice were lodged with the application.**
- 2. A copy of the application was served on the Respondent by Sheriff Officer. Both parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 9 September 2024 at 10am and that they were required to participate. Prior to the CMD the Applicant lodged a submission which stated that she was seeking recovery of the property to sell it, as the mortgage had expired, and the lender was seeking payment of £84,454.**
- 3. The CMD took place on 9 September 2024. The Applicant was represented by Mr Gildea. The Respondent participated.**

The Case Management Discussion

4. Ms McLean told the Tribunal that she did not oppose the application but was seeking a delay in enforcement of the order to give her time to obtain alternative accommodation from the Local Authority. She said that she had consulted the CAB and obtained advice, but they had been unable to provide her with representation. She said that she had received the Notice to Quit and Section 33 notice and had signed the bottom of the Notice to Quit to confirm receipt but that the CAB had pointed out that the Notice to Quit says "Dear Mr Ali" at the beginning and not "Dear Ms McLean". She then referred to a written submission which she had lodged. Mr Gildea confirmed that this had been sent to him by Ms McLean. The CMD was adjourned for ten minutes so that the submission could be located and sent to the Tribunal Members.
5. Following the adjournment the Legal Member advised the parties that the Tribunal had considered the submission and noted that it states, " I note that the copy of the Notice to Quit provided by the landlord is addressed to myself but takes the mistaken form " Dear Mr Ali. Consequently, I will request that the Tribunal makes a finding as to whether the Notice to Quit takes a valid form in all the circumstances." The Tribunal noted that the top of the Notice has the name and address of the Applicant, as the sender, and the correct name of the Respondent as the recipient. It is signed by the Applicant's solicitor. It calls upon the Respondent to vacate the property. Aside from the reference to Mr Ali, the Notice appears to be valid. The reference to Mr Ali appears to be an error. In response to questions from the Tribunal Ms McLean confirmed that she had received the notices in September 2023. She understood the implications of the Notice to quit and appreciated that the reference to Mr Ali was simply a mistake. In the circumstances, the Tribunal confirmed that they are satisfied that the reference to Mr Ali is a minor error which does not invalidate the Notice.
6. The Tribunal then asked Ms Mclean to clarify her position regarding the application. Although she had told the Tribunal at the start of the CMD that she is only seeking additional time to be re-housed, the written submissions invite that the Tribunal to refuse the application on the grounds that it would not be reasonable to grant the order. The submission concludes with a request for a delay in enforcement only if the Tribunal decides to grant the order. Ms McLean told the Tribunal that she did not mean to say that the application is opposed. She used wording suggested by the CAB. She confirmed that she does not oppose the application but just needs extra time. The Tribunal members asked a number to questions to clarify the position. Ms Mclean said that she cannot afford to rent again in the private sector and wants to be re-housed by the Council. She is a full-time student and cannot afford the private sector. She has taken advice from the CAB about her circumstances and spoken to the Council. They are aware of the application. She is planning to submit medical evidence to the Council as she has been told that this should lead to her being awarded additional points. She is also going to increase the number of areas that she will consider. She is concerned about the impact of eviction on her son's

education and the additional time is necessary to minimise any disruption. Ms McLean told the Tribunal that she has been told that she will have to make a homeless application if the order is granted and that she will only be offered temporary accommodation on the day of the eviction. She has no family in the area who can provide her with somewhere to stay. Despite this she does not wish to oppose the order and would prefer to have a Council tenancy.

7. Mr Gildea told the Tribunal that the Applicant has recently been told by the lender that they have taken the decision to start re-possession proceedings in relation to the property. The Applicant does not have the funds to repay the mortgage and needs to sell the property to do so. She has concerns about the costs involved in dealing with the re-possession proceedings. In relation to the possibility of a delay in enforcement of the order, Mr Gildea pointed out that the order cannot be enforced for at least 44 days from the date that it is granted anyway, as the order is not issued until after the appeal period and the Sheriff Officers have to serve a charge. Ms McLean said that she had not been aware of this. She told the Tribunal that she is only seeking eight weeks, not an additional eight weeks. The Tribunal noted that this would mean a delay of two weeks over and above the usual timescale. Mr Gildea said that he had no objection to this.

Findings in Fact

8. The Applicant is the owner and landlord of the property.
9. The Respondent is the tenant of the property in terms of a short assured tenancy agreement.
10. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondents on 15 September 2023.
11. The Respondent resides at the property with her thirteen year old son.
12. The Applicant wishes to recover possession of the property because her mortgage has ended, and she is due to pay the sum of £84,454 to the lender. The Applicant requires to sell the property to re-pay the mortgage
13. The lender has instructed debt collectors and has informed the Applicant that they intend to start proceedings to re-possess the house.
14. The Respondent does not oppose the application and wants to obtain alternative accommodation in the social rented sector.
15. The Respondent has been advised that if she submits medical evidence and extends her area preferences, she will be better placed to be offered accommodation by the Local Authority. She intends to do this.

Reasons for Decision

16. The application was submitted with a short assured tenancy agreement and AT5 Notice. The initial term of the tenancy was 19 August 2017 to 19 February 2018 with a provision that it would continue on a month to month basis after the initial term.
17. Section 32 of the 1988 Act states “(1) A short assured tenancy is an assured tenancy - (a) which is for a term of not less than 6 months; and (b) in respect of which a notice is served as mentioned in subsection (2) below. (2) The notice referred to in subsection (1)(b) above is on which – (a) is in such form as may be prescribed; (b) is served before the creation of the short assured tenancy; (c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under the tenancy; and (d) states that the assured tenancy to which it relates is to be a short assured tenancy.”
18. The Tribunal is satisfied that the tenancy agreement between the parties was for an initial term of 6 months and therefore meets the requirements of Section 32(1) of the 1988 Act. The Tribunal is also satisfied that an AT5 Notice was given to the Respondent prior to the creation of the tenancy. In the circumstances, the Tribunal determines that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act.
19. From the documents submitted with the application, and information provided at the CMD, the Tribunal is satisfied that the Applicant served a Notice to Quit and Section 33 Notice on the Respondent on 15 September 2023. The Notice to Quit called upon the Respondent to vacate the property on 19 November 2023, an ish date. The Notice contains the information prescribed by the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and complies with the terms of Section 112 of the Rent (Scotland) Act 1984. The Notice contains a minor typographical error which does not affects its validity. The Respondent understood the implications of the notice and was not confused by the minor error. The Tribunal is satisfied that the Notice to Quit is valid and that the tenancy contract has been terminated. The Section 33 Notice was also served on 15 September 2023 and gave the Respondent more than 2 months notice that the Landlord wished to recover possession of the property. A Section 11 Notice was submitted with the application, with evidence that it was sent to the Local Authority. The Applicant has therefore complied with Section 19A of the 1988 Act.
20. Section 33 of the 1988 Act, (as amended by the Coronavirus (Recovery and Reform) (Scotland) Act 2022) 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; (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” Subsection 2 states “The period of notice to be given under subsection (1)(d) above shall be – (1) 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”. The Tribunal is satisfied that the tenancy has reached its finish and, as the Applicant has served a valid Notice to Quit, that tacit relocation is not operating. A valid notice in terms of section 33(d) has also been served on the Respondent, giving at least two months’ notice that the Applicant required possession of the property.

21. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession, in terms of Section 33(e) of the 1988 Act.

22. The Tribunal had regard to the following: -

(a) The Respondent does not oppose the application and wants to move to a property provided by the Local Authority. This statement is at odds with the written submission lodged prior to the CMD. However, in response to questions from the Tribunal the Respondent advised that the written submission had been drafted with wording provided by the CAB and that she did not intend to indicate that she wished to oppose the application. She clearly stated during the CMD that she is only seeking additional time to secure an offer from the Local Authority. She fully appreciates that this is not guaranteed and that she may have to reside in temporary accommodation for a period of time

(b) The Applicant needs to sell the property in order to repay the mortgage over it. She has already received correspondence from a debt collector instructed by the lender and been advised that repossession proceedings will shortly be taken

23. For the reasons specified, the Tribunal is satisfied that it would be reasonable to grant the application.

24. The Tribunal is satisfied that the Applicant has complied with the provisions of the 1988 Act and that it would be reasonable to grant the order.

25. The tribunal then considered whether to order a delay in execution of the order in terms of Rule 16A(d) of the Tribunal Procedure Rules 2017. The Tribunal notes that the Respondent only seeks an additional 2 weeks. As a result of the appeal period and the requirement to serve a charge for recovery the earliest date that the eviction could ordinarily be carried out is 24 October 2024. The Applicant has no objection to a further two weeks being allowed. The Tribunal orders that the eviction order cannot be executed until 7 November 2024.

Decision

26. The Tribunal determines that an order for possession of the property should be granted against the Respondent.

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.

Josephine Bonnar, Legal Member

9 September 2024