

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/24/1845

Property at 19C Clouden Road, Cumbernauld, G67 2HP (“the Property”)

Parties:

Ms Jessie Gallagher, 14 Earls Hill, Cumbernauld, Glasgow, G68 9ET (“the Applicant”)

Mr Piotr Sobaszek, 19C Clouden Road, Cumbernauld, G67 2HP (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and David Fotheringham (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.

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, Section 11 Notice and statement from the Applicant 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 28 October 2024 at 2pm and that they were required to participate.**
- 3. The CMD took place on 28 October 2024. The Applicant was represented by Mr Urquhart. The Respondent did not participate and was not represented. He did not contact the Tribunal in advance of the CMD.**

The Case Management Discussion

4. Mr Urquhart told the Tribunal that the Notices were served on the Respondent by recorded delivery post. They had planned to instruct Sheriff Officers, but the Applicant changed her mind and felt this was unnecessary because she was in regular contact with the Respondent at that time. When they carried out a track and trace the Royal Mail website had not been updated and did not confirm that the notices had been delivered. However, the Respondent later confirmed that he had received the documents. Mr Urquhart said that the Notices had been issued by recorded delivery on 8 December 2023 and that they had not been returned to them by the Post Office.
5. The Tribunal noted that the Applicant's statement contains information about her circumstances and reasons for seeking recovery of the property. In response to questions from the Tribunal about the Respondent, Mr Urquhart said that he lives at the property alone. He is understood to be in employment and his rent is up to date. However, he has not responded to calls and emails since July 2024. In his last email, he said that he had a court case coming up, but no details were provided. The Applicant does not have up to date information about him as he stopped communicating with her some time ago. Mr Urquhart said that the letting agents have tried to assist the Respondent to find other accommodation, but he has not engaged with them or told them whether he has managed to find somewhere else to live.

Findings in Fact

6. The Applicant is the owner and landlord of the property.
7. The Respondent is the tenant of the property in terms of a short assured tenancy agreement.
8. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondents on 8 December 2023.
9. The Respondent resides at the property alone.
10. The Applicant wishes to recover possession of the property in order to sell it.
11. The Applicant and her husband have retired and require to sell the property to help fund their retirement.
12. The Respondent previously indicated that he would like to purchase the property but did not make a formal offer.

Reasons for Decision

13. The application was submitted with a short assured tenancy agreement and AT5 Notice. The initial term of the tenancy was six months starting on 29 July 2014 with a provision that it would continue on a two monthly basis after the initial term.
14. 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.”
15. The Tribunal is satisfied that the tenancy agreement between the parties was for an initial term of six 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.
16. 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 8 December 2023. The Notice to Quit called upon the Respondent to vacate the property on 29 March 2024, 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 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 8 December 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.
17. 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.

18. 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.

19. The Tribunal had regard to the following: -

(a) The Respondent did not attend the CMD or notify the Tribunal that the application is opposed.

(b) The Respondent resides at the property alone. The Applicant was unable to provide the Tribunal with any information about the Applicant’s current circumstances but confirmed that he was previously in employment and his rent is up to date.

(c) The Applicant and her husband have retired and want to sell the property to supplement their state pensions.

(d) The Respondent told the Applicant that he would make an offer for the property. A price was verbally agreed. The Respondent failed to make a formal offer and has stopped communicating with both the Applicant and her letting agent. It is not known whether he changed his mind or did not have the resources to proceed with the purchase.

20. In the circumstances, the Tribunal is satisfied that it would be reasonable to grant the application.

21. 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.

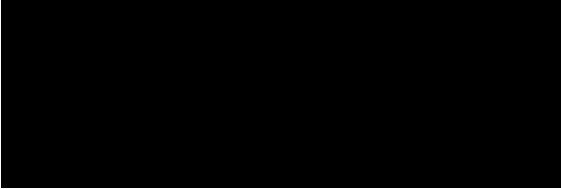
Decision

22. 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.



28 October 2024