

**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/24/2485

**Re: Property at Navitie Cottage, Great North Road, Kelty, Fife, KY4 0HW ("the
Property")**

Parties:

**Mr Alexander Campbell and Mrs Caroline Ann Campbell, 2 Seafar Drive, Kelty, KY4
0JX ("the Applicants")**

**Miss Pamela Lorraine Burnett, Navitie Cottage, Great North Road, Kelty, Fife, KY4
0HW ("the Respondent")**

Tribunal Members:

Gillian Buchanan (Legal Member) and Mary Lyden (Ordinary Member)

Decision

At the Case Management Discussion ("CMD") which took place by telephone conference on 28 October 2024, the Applicants were not in attendance but were represented by Ms Danielle Purvis of Andrew Baillie Solicitors. The Respondent was in attendance.

Prior to the CMD the Tribunal had received the following additional written representations:-

- i. Email from the Respondent dated 3 October 2024.
- ii. Email from Ms Purvis dated 22 October 2022.

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that:-**

Background

The Tribunal noted the following background:-

- i. The Applicants are the heritable proprietors of the Property.
- ii. The Applicants leased the Property to the Respondent in terms of a Short Assured Tenancy ("the SAT") that commenced on 1 September 2017.

- iii. The initial term of the SAT was for the period to 1 March 2018 and in terms thereof the SAT thereafter continued on a month to month basis.
- iv. On 28 March 2024, the Applicants served on the Respondent by recorded delivery post a Notice to Quit and a Notice under Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") requiring the Respondent remove from the Property by 1 June 2024.
- v. The Applicant has served on Fife Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

The CMD

At the CMD Ms Purvis for the Applicants made the following submissions in response to questions from the Tribunal:-

- i. The Tribunal asked Ms Purvis if the Respondent had occupied the Property prior to the date of commencement of the SAT. She was not aware of that.
- ii. The Tribunal asked if the rent remained at £300 per calendar month per the SAT. She said she believed so and had not been told otherwise.
- iii. The Tribunal observed that the date of the Notice to Quit was 29 March 2024 whereas the date on the Section 33 Notice was 28 March 2024. After slight confusion, Ms Purvis confirmed that the Notices were served together by recorded delivery on 28 March 2024 and that there was an error in the date of the Notice to Quit which should have read 28 March 2024.
- iv. The Tribunal stated that there was no information in the application as to why the Applicants wish to recover possession of the Property. Ms Purvis said that they wished to dispose of the Property. That was the only reason the Applicants had provided. She said they have one other property, being a residential property connected to a car garage. That other residential property is rented out to a third party. The Applicants are retaining that property meantime and would sell it with the garage in due course.
- v. The Tribunal asked if the Applicants bought the Property in 2006 as a buy-to-let property. Ms Purvis said she was not sure. She said that on any sale of the Property her firm would deal with the conveyancing. She was not aware of any Home Report having been instructed relative to the proposed sale of the Property.
- vi. Ms Purvis was not clear if there was a mortgage over the Property. However, the Tribunal noted there to be no security per the Title Sheet.
- vii. Ms Purvis was unaware of the size of the Property.
- viii. She was unaware if the rent was up-to-date but believed the Respondent always pays on time.
- ix. The tribunal asked Ms Purvis if she had any other submissions to make in support of the application and she said she had spoken to the Applicants this morning and had nothing more to add.

At the CMD the Respondent made the following oral submissions in response to questions from the Tribunal: –

- i. She previously lived in the Property with her partner. Her partner rented the Property from the Applicants and she thought her name might also have been on that tenancy agreement. When her partner died the SAT was entered into.
- ii. The Property has two bedrooms, a dining room and a sitting room together with a kitchen and bathroom.

- iii. The Respondent lives in the Property alone.
- iv. The Respondent believes the Applicants wish to sell the Property.
- v. Fife Council will only allocate her alternative accommodation after an eviction order has been granted.
- vi. The rent has never been £300 per month. Previously, when her partner was alive, the rent was £350 per calendar month and the Respondent personally took that amount of money to the car garage owned by the Applicants each month.
- vii. Once the Respondent's partner became unwell he qualified for disability benefits and the Respondent moved in to look after him. It was at that point that the Respondent's partner elected to put the rent up to £400 per month which the Applicants had not asked for. Thereafter the Respondent delivered £400 per month to the Applicants at the garage.
- viii. The Respondent is in receipt of benefits being her state pension, pension credits and Personal Independence Payments. She requires to pay £300 on the 1st day of each month and take a further £100 in cash to the garage. She has never been behind with her rent.
- ix. The other residential property owned by the Applicants to which Ms Purvis referred is attached to the Property and she understands that will be sold in the garage is ultimately sold. She does not know when that might be.
- x. The Respondent's partner and the First Applicant went to school together. He previously asked the First applicant if the Respondent would be okay to stay in the Property and he assured him that the Respondent would not be put out.
- xi. When the Respondent went to the garage last August the First Applicant stated that he had bad news namely that he was thinking of selling the Property. The Respondent heard no more until Notices were served.
- xii. She is 68 years of age.
- xiii. She bears no grudges towards the Applicants. However, the current position is making her very anxious and she is not eating or sleeping well.
- xiv. She requires ground floor accommodation.
- xv. She is worried about being put into bed-and-breakfast accommodation, what will happen with her cat and how she will store her belongings.
- xvi. The Respondent's daughter stays in Kinross. Her son stays in Steelend. He has two children and three dogs. There is no room for the Respondent and she does not want to be a burden to them.
- xvii. She looks after her grandchildren each morning. Her daughter-in-law drops them to her and she takes them to school in her car.
- xviii. She has been looking for private lets and also to buy properties. Housing association properties are few and far between.
- xix. Fife Council say the Respondent is only entitled to a one bedroom property. She would accept that but would be to sell her furniture.
- xx. The Council is aware of her health issues.
- xxi. She has been told she will need to go wherever the Property is allocated which could be anywhere in Fife.
- xxii. She is working with a housing officer but it is not the housing officer for Kelty.
- xxiii. The Respondent has looked in the private sector too. Rent levels are around £500 per month but most of them are taken.
- xxiv. The Respondent said she had done work on the Property over the years including replacing a fireplace, seven new doors to which the Applicants contributed some funds, replacing the bathroom and installing a new spa bath, replacing the shower and generally keeping Property up-to-date.

Following the parties' oral submissions the tribunal briefly adjourned to consider the position.

Reasons for Decision

The application proceeds upon Section 33 of the 1988 Act which states:-

"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 ish;

(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."

The Tribunal is satisfied that the SAT has reached its ish and that tacit relocation is not operating.

The Tribunal is satisfied that the Applicants has given notice to the Respondent that they require possession of the Property having regard to the terms of Section 33(2).

However, the Tribunal also requires to be satisfied that it is reasonable to issue an eviction order in terms of sub-paragraph 1(e). The Tribunal was not so satisfied.

The application for an eviction order contained no information of any description whatsoever as to why the Applicants wish to recover possession of the Property and the issue of the reasonableness of granting an eviction order is not addressed in any shape or form.

The position was little different at the CMD where Ms Purvis for the Applicants simply stated that they wished to dispose of the Property. She said this was the only reason provided by the Applicants. She had little other useful information. She was not aware if the Respondent had lived in the Property for a period prior to the SAT. She had no information on the ages of the Applicants. She did not know if the Property had originally been purchased as a buy-to let property and was unaware of whether any mortgage existed. Ms Purvis did not know the size of the Property and was unaware how rent by the Respondent is paid. Ms Purvis had no other submissions to make in support of the reasonableness of the application being granted.

The Respondent on the other hand had lodged detailed written submissions outlining why it would not be reasonable for an eviction order to be granted in light of her vulnerabilities – at least not without giving her time to find alternative accommodation. She had produced evidence of her health conditions and spoke as to why living in Kelty, where she is supported by her friends and family during periods of poor health, is very important. She explained her significant concerns that she may be allocated accommodation anywhere in Fife and that she worried for being placed in bed and breakfast type accommodation and how she would then

store her belongings and home her cat. She has lived in the Property for 12 years and always pays her rent in full and on time.

Neither party challenges the position of the other. There are no issues of contention. However, in the absence of any meaningful information from the Applicants as to why they wish to recover possession and dispose of the Property the circumstances of the Respondent outweigh those of the Applicants and the Tribunal was not persuaded that it would be reasonable to grant an eviction order.

Decision

The application for an eviction order relative to the Property is refused.

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.

Gillian Buchanan

Legal Member/Chair

28 October 2024
Date