



**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/24/2374

Re: Property at 7/4 Blackie Road, Edinburgh, EH6 7NA (“the Property”)

Parties:

Mr Edward Lamb, 11 Prospect Bank Road, Edinburgh, EH6 7NS (“the Applicant”)

Mrs Suzanne Bryce, 7/4 Blackie Road, Edinburgh, EH6 7NA (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order with execution of said order suspended for a period of two months from the date of this decision.

Background

- 1 By application to the Tribunal dated 22 May 2024 the Applicant sought an eviction order against the Respondent in respect of the Property under section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”) and Rule 66 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Procedural Regulations 2017. In support of the application the Applicant provided the following documentation:-
 - (i) Short Assured Tenancy Agreement between the parties dated 9 February 2007 together with Form AT5;
 - (ii) Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988, both dated 9 February 2024, together with proof of service by Sheriff Officers on 15 February 2024.

- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Edinburgh City Council together with proof of service by email;
 - (iv) Signed confirmation from John Bryce regarding surrender of his interest in the tenancy; and
 - (v) Written consent from the joint owner Patricia Fitzpatrick authorising the Applicant to proceed with the application in his sole name.
- 2 By Notice of Acceptance of Application dated 16 July 2024 a Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. The application was therefore referred to a Case Management Discussion (“CMD”) on 20 November 2024. A copy of the application paperwork together with notification of the date and time of the CMD and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers in accordance with Rule 17(2) of the Rules. Both parties were invited to make written representations in advance of the CMD.
- 3 On 13 November 2024 the Tribunal received an email from the Applicant’s representative with a list of documents in advance of the CMD which included correspondence and mortgage statements from Halifax plc, a letter from the Applicant’s financial adviser and a letter from the Applicant’s representative confirming the Applicant’s instructions to proceed with the sale of the property in the event of an eviction order being granted.

Case Management Discussion

- 4 The CMD took place on 20 November 2024 by teleconference. The Applicant was in attendance and represented by Ms Lynn Harrison, Solicitor. The Respondent was in attendance and accompanied by her neighbour Kirsty Mulcahy as a supporter.
- 5 The Tribunal explained the purpose of the CMD and the legal test under section 33 of the 1988 Act, and asked for submissions from the parties on their respective positions. For the avoidance of doubt the following is a summary of the submissions made and does not constitute a verbatim account of the discussion.
- 6 Ms Harrison confirmed that the Applicant had served the relevant notices to bring the tenancy to an end under section 33 of the 1988 Act. There did not appear to be any issues with the validity of the notices that had been served. The question for the Tribunal was therefore whether it was reasonable to make an eviction order in this case. Ms Harrison confirmed that the Respondent had remained in the property following the termination date. The property was a three bedroom flat and Ms Harrison understood that the Respondent resided there with two of her children.
- 7 Ms Harrison explained that the value of the property had been estimated at £250,000. The Applicant and his wife had run their residential property rental

business for a number of years. It had been their full time occupation since 2006. The Applicant was now 60 and his wife was 58. They were in the process of planning for their retirement. As part of that plan they were looking at winding down their rental business and the sale of the property was part of that process. The Applicant and his wife were intending on reducing the number of rental properties they owned.

- 8 Ms Harrison explained that the property was one of only two properties in the Applicant's portfolio that did not have a mortgage over it. The majority of the Applicant's properties were subject to interest only mortgages. The Applicant required to reduce this debt as part of his retirement planning. The expectation was that the Applicant could achieve a purchase price of £250,000 for this property. The intention thereafter was to use the sale proceeds to pay off the mortgage in place for the Applicant's principal home where he lived. Ms Harrison made reference to the documents from Halifax PLC which had been lodged with the list of documents. The outstanding balance on the mortgage over the Applicant's home was £151,388.64. Ms Harrison pointed out that there were only three years left on this mortgage. It was set up on an interest only basis. The Applicant had been making additional payments to reduce the capital balance however even taking those into account the capital balance was still significant.
- 9 Ms Harrison explained that the Applicant intended to use any surplus funds from the sale of the property for pension contributions or investment products in order to spread and diversify his and his wife's financial affairs. At present the majority of their capital was tied up in their rental properties. Ms Harrison referred to the letter that had been lodged from the Applicant's financial adviser, which confirmed the discussions that had taken place on this issue, and the advice to sell off the rental properties gradually with a view to investing the proceeds in pensions or investment products. The Applicant and his wife currently had limited pension provision. Ms Harrison confirmed that her firm had been instructed by the Applicant to proceed with the sale of the property following the grant of an eviction order. She referred to the letter than had been submitted with the list of documents in support of this.
- 10 Ms Harrison explained that another part of the reason for retirement was that the Applicant's wife now had additional caring responsibilities for her 94 year old mother. Her mother had been diagnosed with Alzheimer's disease and resided with the Applicant and his wife. Ms Harrison concluded by submitting that the requirements of section 33 of the 1988 Act had been met and the circumstances outlined indicated that it would be reasonable for an eviction order to be made.
- 11 The Tribunal asked Ms Harrison about the Applicant's portfolio. Ms Harrison confirmed that the Applicant had 14 residential properties and 1 commercial property. One of the residential properties had already been sold. The focus had been on that property, and the property that was the subject of the application, which was one of only two in the portfolio not subject to a mortgage. The equity in the property was significant, which was not the case with the other properties owned and rented by the Applicant. She understood that the plan to reduce the portfolio needed to be approached on a gradual basis given the tax implications. The Tribunal asked if there was a possibility of the Applicant waiting for tenants

to move on naturally before selling his properties. Ms Harrison advised that this was unlikely. The Applicant tended to have long term tenants. He was a good landlord.

- 12 The Tribunal asked about the joint tenant John Bryce. Ms Harrison confirmed that following his departure the tenancy had continued in the sole name of the Respondent. Neither the Applicant nor Ms Harrison had been privy to the circumstances but believed there had been a marital separation. The Applicant had been happy for the Respondent to remain as the sole tenant. Ms Harrison confirmed that the Respondent had generally paid rent on time. The rent was £650, which was considered fairly modest given the market rates in the area. The Applicant had never sought to increase the rent at any time during the tenancy.
- 13 The Tribunal proceeded to hear from the Respondent. She advised that she had received a previous notice to quit back in 2021 and had approached the local authority at that time. She was already on their waiting list. When the time came for her to leave in 2022, her marriage had broken down and her husband had left the tenancy. She had been advised by the local authority to stay in the property. Over the last two and a half years she felt she had been hitting brick walls insofar as her application for rehousing with the local authority. She felt sorry for the Applicant and did not want to be in the position she was in. She was currently on the homeless priority list and had been for two years. Finding a three bedroom property appeared impossible. The local authority had however told her to get back in touch with them once she received a date to leave the property.
- 14 The Tribunal asked who resided in the property with the Respondent. She confirmed that she lived with her twin sons aged 17. One of them was at college and another was in part-time employment. The Respondent confirmed that she was 49 years old. She was in employment, and her place of work was approximately 15 minutes from where she stayed by bus. She had been attending the local authority housing office on a regular basis to seek updates on her application. She had been told the week prior to the CMD that she was near the top of the list, but it could take another few months to get a property. Every time she bid for a house she would get more points. The local authority were aware of the Tribunal application and had told her to present herself at the housing office when she had a date to leave to declare herself homeless. They would then see what they could do.
- 15 The Tribunal asked parties about a possible suspension of the execution of the eviction order, were the Tribunal minded to grant same. The Applicant confirmed that he would not oppose this. The Respondent advised that she would not object to the making of an eviction order but would be seeking additional time to obtain rehousing.
- 16 The Tribunal held a short adjournment of the proceedings to deliberate, at which point parties left the call, before resuming the CMD and confirming its decision.

Relevant Legislation

- 17 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Housing (Scotland) Act 1988:-

“32 Short assured tenancies.

(1)A short assured tenancy is an assured tenancy—

(a)which is for a term of not less than six 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 one which—

(a)is in such form as may be prescribed;

(b)is served before the creation of the 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 that tenancy; and

(d)states that the assured tenancy to which it relates is to be a short assured tenancy.

(3)Subject to subsection (4) below, if, at the finish of a short assured tenancy—

(a)it continues by tacit relocation;

(b).

the continued tenancy... shall be a short assured tenancy, whether or not it fulfils the conditions in paragraphs (a) and (b) of subsection (1) above.

(4)Subsection (3) above does not apply if, before the beginning of the continuation of the tenancy the landlord or, where there are joint landlords, any of them serves written notice in such form as may be prescribed on the tenant that the continued tenancy is not to be a short assured tenancy.

(5)Section 25 above shall apply in relation to a short assured tenancy as if in subsection (1) of that section the reference to an assured tenancy were a reference to a short assured tenancy.

33 *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; and

(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 six months, that period;

(ii) in any other case, six 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.”

Findings in Fact and Law

- 18 The Applicant entered into a Short Assured Tenancy Agreement with the Respondent and John Bryce dated 9 February 2007, the term of which was 9 February 2007 to 10 August 2007, and monthly thereafter. Both the Respondent and John Bryce were provided with a Form AT5 prior to signing the said Tenancy Agreement.
- 19 The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 20 On 9 July 2022 John Bryce surrendered his interest in the tenancy and left the property.

- 21 On 15 February 2024 the Applicant delivered to the Respondent a Notice under section 33 of the Housing (Scotland) Act, stating that the Applicant required the property back by 10 May 2024, and a Notice to Quit which sought to terminate the tenancy as at that date. The Notices were served by Sheriff Officers.
- 22 The Notice to Quit included the prescribed information required under the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988.
- 23 The Notice to Quit terminates the tenancy as at 10 May 2024 which is an ish date under the terms of the tenancy agreement.
- 24 The Applicant has title to sell the property and intends to do so once in receipt of vacant possession.
- 25 The Applicant is aged 60. The Applicant's wife is aged 58.
- 26 The Applicant and his wife are winding down their lettings business with a view to retirement, and following an increase in caring responsibilities for the Applicant's mother in law. The Applicant's mother in law is 94 years old and has been diagnosed with Alzheimers. She resides with the Applicant and his wife in their principal home.
- 27 The Applicant has a rental portfolio of 14 residential properties and 1 commercial property. The Applicant intends to sell the properties gradually and invest the proceeds in pensions or investment products. The Applicant has sold one other residential property to date.
- 28 The majority of the Applicant's properties are subject to an interest only mortgage. Only this property, and one other residential property, are mortgage free.
- 29 The Applicant has received advice from an independent financial adviser to sell the property in order to repay the mortgage on his principal home and to secure a source of income in retirement. The balance due on the mortgage is £151,388.64.
- 30 The Applicant and his wife have limited pension provision. The market value of the property is approximately £250,000. The Applicant intends to put any surplus funds from the sale of the property towards pension contributions and investment products.
- 31 The Respondent is 49 years old.
- 32 The Respondent resides in the property with her twin sons aged 17, one of whom is in part time employment and the other attends college.

- 33 The Respondent is in employment. The Respondent's place of work is approximately a 15 minute journey from the property by bus.
- 34 The Respondent has applied for housing with the local authority. The Respondent has been told by the local authority that she is near the top of the waiting list for rehousing.
- 35 The Respondent does not object to the making of an eviction order, provided she is given additional time to find suitable alternative accommodation.

Reasons for Decision

- 36 The Tribunal was satisfied at the CMD that it had sufficient information upon which to make a decision on the application and that to do so would not be contrary to the interests of the parties. The Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved or facts in dispute that would require a hearing.
- 37 The Tribunal was satisfied that the Respondent had been served with a valid Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988, terminating the tenancy as at the ish date of 10 May 2024. She had not disputed this, nor had she raised any issues with the validity of the notices.
- 38 The issue for the Tribunal to determine therefore was whether it was reasonable in all the circumstances to grant an eviction order, which required the Tribunal to identify all factors relevant to the assessment of reasonableness in the particular circumstances of this case.
- 39 The Tribunal had regard to the Applicant's reasons for selling the property. He had provided supporting documents to evidence this. The Tribunal took into account the fact that he and his wife were approaching retirement age and had limited pension provision. They therefore required to release the equity in their rental portfolio to secure their income in retirement. On the basis that the property had no mortgage in place, unlike the majority of the other properties in the Applicant's portfolio, it made sense for the Applicant to select this property to sell in order to release the equity therein, and to approach the downsizing of the portfolio on a gradual basis thereafter due to the tax implications. The Tribunal also noted the additional caring responsibilities that the Applicant and his wife were facing as a result of her mother's Alzheimer's diagnosis which had in part led to the decision to gradually withdraw from their lettings business. These were all relevant factors to which the Tribunal applied significant weight.
- 40 The Tribunal also had regard to the Respondent's circumstances, noting that she resided with their two children, and was employed in the local area. The Tribunal also took into account the length of time that she had resided in the property. However, whilst the Tribunal had concerns about the impact of eviction on the Respondents' family, it gave greater weight to the fact that the

Respondent was not opposing the eviction order, and was close to the top of the local authority waiting list for rehousing. It was likely that the making of an eviction order would give her application greater priority in this regard.

- 41 Accordingly having weighed up those factors that were relevant to the question of reasonableness the Tribunal concluded that the balance weighed in favour of making an eviction order. The Tribunal was therefore satisfied that the provisions of section 33 of the 1988 Act had been met and it would be reasonable to make an eviction order in the particular circumstances of this case. However in view of the upcoming festive period, and in order to give the Respondent sufficient time to obtain rehousing with the council, the Tribunal determined to suspend execution of the eviction order for a period of two months.
- 42 The Tribunal therefore determined to make an eviction order with execution of said order suspended for a period of two months from the date of this decision.
- 43 The decision of the Tribunal was unanimous.

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.

R O'Hare

20 November 2024

Legal Member/Chair

Date