



**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/24/3001

Re: Property at 39 Newton Church Road, Danderhall, EH22 1LY (“the Property”)

Parties:

Mrs Gillian Thomson, 23 Glebe Crescent, Athelstaneford, North Berwick, East Lothian, EH39 5BG (“the Applicant”)

Ms Fiona Milton, 39 Newton Church Road, Danderhall, EH22 1LY (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988, with enforcement of that order delayed until 31 March 2025.

- Background
 1. An application was submitted to the Tribunal under Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a repossession order against the Respondent upon termination of a short assured tenancy agreement.
- The Case Management Discussion
 2. A Case Management Discussion took place on 29 November 2024 by conference call. The Applicant was represented by Mr Jack Rennie, Anderson Strathern. The Respondent was personally present and represented by Mr Alan Baxter, Midlothian Council.

3. The Applicant's representative moved for the order for repossession to be granted as sought. The parties had entered into a Short Assured Tenancy Agreement which commenced in 2014. The tenancy agreement had been drawn up by the Applicant's former Agents, Messrs Somerville & Russell, which firm is no longer operating. A copy of the tenancy agreement has not been located. The Applicant had served a Notice to Quit and Notice in terms of section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") on the Respondent. The Respondent has failed to remove from the Property and continues to reside therein. The Applicant requires repossession of the Property in order to sell same. The Applicant wishes to purchase a suitable property for her disabled son, and requires to sell the Property in order to fund said purchase. No steps have been taken to proceed with a purchase, until there is certainty regarding obtaining vacant possession of the Property.
4. The Respondent's representative submitted that there was no objection to the order being granted, however the Respondent sought a delay in the period of enforcement of the order. It was submitted that the Respondent is on the waiting list for a local authority house and has been given high priority based on medical need. If she was to make a homeless application following an order being granted by the tribunal and if there is no permanent accommodation available and which is suitable for her needs, she will only be offered temporary accommodation which may not be suitable for her needs. It was submitted that an additional period of time before the order can be enforced will enable the local authority to source suitable permanent accommodation which will suit her needs. An additional period of 4-6 months was sought.

- Findings in Fact

5. The Tribunal made the following findings in fact:

- (i) The parties entered into a Short Assured Tenancy Agreement ("the Agreement") which commenced 1 July 2014;
- (ii) A Notice to Quit and notice under section 33 of the 1988 Act were served on the Respondent on 30 April 2024 by recorded delivery post;
- (iii) The Notice to Quit and notice under section 33 of the 1988 Act required the Respondent to remove from the Property by 1 July 2024;
- (iv) The Respondent had failed to remove from the Property and continued to reside therein;
- (v) The Applicant requires to sell the Property.

- Reasons for Decision

6. The Tribunal was satisfied that the terms of section 33 of the 1988 Act had been met: namely that the tenancy had reached its end; tacit relocation was not operating; a notice had been served in terms of that section giving at least 2 months' notice; and that it was reasonable to grant the order. The Tribunal noted that the order was not opposed by the Respondent. The Tribunal was satisfied that it would be reasonable to extend the period of enforcement of the order from the usual 30 day period, to not before 31 March 2025. The Tribunal considered the involvement of the local authority in sourcing permanent

accommodation suitable for the Respondent's needs and the additional time needed for same, and also that the order was not being sought on the basis of any fault of the Respondent. The Tribunal also considered the position of the Applicant, in that whilst she required to sell the Property, she was not facing any specific time constraints in relation to any onward purchase at this stage which required earlier enforcement of the order. The Applicant would still have the certainty of the order, albeit having to wait a longer period for enforcement of same.

- Decision
7. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988, with enforcement of same not to take place prior to 31 March 2025.

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.

Fiona Watson

Legal Member/Chair

Date: 29 November 2024