



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/24/2690

Re: Property at 4 Brington Place, Dundee, DD4 7QF (“the Property”)

Parties:

Ms Jenny Pedersen, 5 Margaret Crescent, Dundee, DD5 1ND and Mr John Fitzpatrick, 4 Dundee Road West, Dundee, DD4 7NY (“the Applicants”)

Ms Cheryl Burke, 4 Brington Place, Dundee, DD4 7QF (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and made an Order for Possession of the Property.

Background

1. By application, dated 12 June 2024, the Applicant sought an Order for Possession of the Property under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”), namely recovery of possession on termination of a Short Assured Tenancy.
2. The application was accompanied by a copy of a Short Assured Tenancy Agreement between Mrs Beryl Fitzpatrick and the Respondent, commencing on 11 July 2013 and, if not ended by either party on 11 January 2014, continuing on a monthly basis until terminated by either party, and copies of a Notice under Section 33 of the 1988 Act and a Notice to Quit, both dated 9 April 2024, and both requiring the Respondent to vacate the Property by 11 June 2024. The Applicants confirmed that they had inherited the Property from their mother, Mrs Fitzpatrick, when she died in 2022. They stated that Ms Pederson is in the process of divorcing her husband and requires vacant possession as she needs to move into the Property herself.

3. On 11 November 2024, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 2 December 2024. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

4. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 19 December 2024. The Applicants were represented by Miss Katie Butchart of Pax Property Ltd, Monifieth. The Respondent was not present or represented.
5. The Applicants' representative told the Tribunal that Ms Pederson's marital home had recently been put on the market and had sold, so she needed to recover possession in order to live in the Property. Miss Butchart understood that the Respondent has a teenage daughter living with her and said that, in conversations with her, the Respondent had indicated that she understood the situation and did not oppose the making of an Order, and that the local authority would not assist her unless and until an Order was made.

Reasons for Decision

6. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.
7. Section 33 of the 1988 Act states that the Tribunal may make an Order for Possession of a house let on a Short Assured Tenancy if it is satisfied that the Short Assured Tenancy has reached its end, that tacit relocation is not operating, that no further contractual tenancy is for the time being in existence, that the landlord has given to the tenant notice stating that he requires possession of the house, and that it is reasonable to make the Order for Possession.
8. The Tribunal was satisfied that the tenancy had reached its end, that, by service of the Notice to Quit, tacit relocation was not operating, that there was no further contractual tenancy in existence between the Parties and that the Notice required under Section 33 of the 1988 Act had been properly given. The remaining matter for the Tribunal to consider was, therefore, whether it would be reasonable to issue an Order for Possession.
9. In arriving at its decision as to whether it would be reasonable to make an Order for Possession, the Tribunal considered carefully all the evidence before it and noted in particular that the Applicant Ms Pederson states that she requires to move into the Property as a consequence of divorce proceedings and the sale of the matrimonial home and that it appears that

the Respondent is not opposing the Order, which she requires before the local authority will provide any assistance in rehousing her and her daughter. Accordingly, the Tribunal decided that it would be reasonable to make an Order for Possession.

10. Under normal circumstances, the Tribunal's Order would become enforceable whenever the time limit for an appeal has passed, but the Tribunal was mindful of the fact that local authority services will be affected by the imminent Christmas and New Year holidays, so the Tribunal's view was that the Order should not be enforceable before 31 January 2025. Miss Butchart had advised the Tribunal that the Applicants would fully understand the situation and would have no objection. The Respondent has been a good tenant, and the Applicants would want the tenancy to end amicably if at all possible.

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.

George Clark

Legal Member/Chair

19 December 2024
Date