

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/24/2767

Re: Property at 19B Kilwinning Terrace, Musselburgh, EH21 7ED (“the Property”)

Parties:

Mr James Hadden, Mrs Susan Hadden, 21 Monktonhall Place, Musselburgh, EH21 6RR (“the Applicant”)

Mr Ognyan Todorov Simeonov, Ms Emilia Dobрева Asenova, 19B Kilwinning Terrace, Musselburgh, EH21 7ED (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order with execution of the order suspended until 31st January 2025

Background

- 1 By application to the Tribunal dated 18 June 2024 the Applicants sought an eviction order against the Respondents in respect of the Property under section 33 of the Housing (Scotland) Act 1988 and Rule 66 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”). In support of the application the Applicants provided the following documentation:-
 - (i) Short Assured Tenancy Agreement between the parties dated 24 January 2014 together with Form AT5;

- (ii) Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988, both dated 21 March 2024, together with proof of service by hand delivery to the Respondents on 22 March 2024;
 - (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to East Lothian Council together with proof of service by email; and
 - (iv) Email from the Applicants authorising the Applicant's representative to represent them in the Tribunal proceedings.
- 2 By Notice of Acceptance of Application dated 11 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 19 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 Respondents 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 22 October 2024 the Tribunal received an email from the Respondents requesting a Bulgarian interpreter for the CMD as neither of them could speak English.

Case Management Discussion

- 4 The CMD took place on 19 November 2024 by teleconference. The Applicants were represented by Mrs Jacqueline Barr, an employee of the Applicant's representative. The Respondents were both in attendance. The Tribunal had also arranged for a Bulgarian interpreter to be present who interpreted the proceedings for the Respondents.
- 5 The Tribunal explained the purpose of the CMD and the legal test and asked for the submissions on behalf of both parties. 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 Mrs Barr explained that the tenancy between the parties was a short assured tenancy which had commenced in 2014. The Applicants had always planned on moving away from Scotland upon their retirement. They had now retired and were living in Dublin to be closer to their family. They were staying in rented accommodation. They required to sell the property in order to purchase a new home in Ireland. Their mortgage was due to run out in 2025 and there was still £1003 outstanding. In order to settle with their family they needed to sell the property to purchase a new home.
- 7 The Respondents confirmed that they had received the notice to quit and the section 33 notice. They had been planning to move from the property anyway as it was too small. They required a three bedroom property. It had however been

hard to find accommodation. They had submitted several applications via letting agents however these had been rejected. They did not know why. The Respondents had also applied for a mortgage to purchase a property but were not approved by the lender. At one point they had planned to purchase the property they were renting but the loan was refused. They had spoken with the council and had been told that the council could not help them at this stage and they would need to keep looking for accommodation on their own. They had been looking for a property ever since.

- 8 The Respondents confirmed that they had advised the council of the application for the eviction order and had been told that if the order was granted the council would provide them with accommodation. They resided in the property with their 12 year old daughter and 10 year old son. Mr Simeonov was in full time employment and Ms Asanova was in part time employment. They understood that the Applicants wished to sell the property and they would have to move out.
- 9 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

- 10 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

- 11 The Applicants entered into a Short Assured Tenancy Agreement with the Respondents dated 24 January 2014, the term of which was 24 January 2014 to 23 January 2015 and monthly thereafter. The Respondents were both provided with a Form AT5 prior to signing the said Tenancy Agreement.
- 12 The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 13 On 22 March 2024 the Applicants delivered to the Respondents a Notice under section 33 of the Housing (Scotland) Act, stating that the Applicants required the property back by 23 May 2024, and a Notice to Quit which sought to terminate the tenancy as at that date. The Notice to Quit was in the prescribed form. The Notices were hand delivered to the Respondents.
- 14 The Notice to Quit terminates the tenancy as at 23 May 2024 which is an ish date under the terms of the tenancy agreement.
- 15 The Applicants require vacant possession of the property in order to sell the property.
- 16 The Applicants are both retired.
- 17 The Applicants have moved to Dublin to be closer to family. The Applicants are currently in rented accommodation.
- 18 The Applicants require the funds from the sale of the property to purchase a new home in Ireland once their mortgage term ends.
- 19 The Respondents have sought advice from the local authority. The Respondents have been advised by the local authority that they will be rehoused in the event of an eviction order being granted.
- 20 The Respondents reside in the property with their 12 year old daughter and their 10 year old son. The Respondents are both in employment.
- 21 The Respondents require a larger property to accommodate their family.
- 22 The Respondents have applied for properties via letting agents. To date the Respondents have been unsuccessful in finding alternative accommodation.
- 23 The Respondents have applied for a mortgage to purchase a property. The Respondents' mortgage application has been refused.

Reasons for Decision

- 24 The Tribunal was satisfied at the CMD that it had sufficient information upon which to make a decision 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.
- 25 The Tribunal was satisfied that the Respondents 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 23 May 2024. They had accepted this at the CMD and the Applicant had produced an email from the Council dated 22 March 2024 confirming that they had personally received the notices. The issue for the Tribunal to determine therefore was whether it was reasonable in all the circumstances to grant an eviction order.
- 26 The Tribunal accepted the Applicants' reason for terminating the tenancy, namely to fund the purchase of a new home in Ireland where they could be closer to their family following their retirement. The Tribunal noted that they were currently staying in rented accommodation. The Tribunal considered this to be a factor relevant to the assessment of reasonableness to which the Tribunal could apply significant weight.
- 27 The Tribunal also had regard to the Respondents' personal circumstances, noting that they resided with their two children. Whilst the Tribunal had concerns about the impact of eviction on the Respondents' family, it took into account the fact that the council had advised them they would be rehoused, were an eviction order to be granted by the Tribunal. The Tribunal further took into account the fact that the Respondents were both in employment, and would therefore have the means to fund a tenancy in the private sector if they wished to go down that route. They appeared accepting of the fact that they required to move from the property and had been proactive in trying to find suitable alternative accommodation. The Tribunal noted the challenges they had faced in this regard, but any concerns the Tribunal had in that respect were allayed by the position the council had outlined in terms of rehousing.
- 28 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 Respondents sufficient time to be rehoused, the Tribunal determined to suspend execution of the eviction order until 31st January 2025.

29 The Tribunal therefore determined to make an eviction order with execution of said order suspended until 31st January 2025. 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.

Ruth O'Hare

Legal Member/Chair

Date 19 November 2024