



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/24/3080

Re: Property at 59 Raeburn Crescent, Hamilton, ML3 9QD (“the Property”)

Parties:

Mrs Lisa Watt, 8 Virtue Well View, Airdrie, ML6 0QJ (“the Applicant”)

Miss Angela Smith, 59 Raeburn Crescent, Hamilton, ML3 9QD (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1 By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under Rule 66 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 and section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). In support of the application the Applicant provided the following documentation:-

- (i) Short Assured Tenancy Agreement between the parties together with Form AT5;
- (ii) Notice to quit to the Respondent dated 25 January 2024;
- (iii) Notice under section 33(1)(d) of the Housing (Scotland) Act 1988 to the Respondent dated 25 January 2024;

- (iv) Proof of service of the notice to quit and notice under section 33(1)(d) of the Housing (Scotland) Act 1988 upon the Respondent by recorded delivery mail;
 - (v) Notice under section 11 of the Homelessness (Scotland) Act 2003 to South Lanarkshire Council; and
 - (vi) Copy letters from McEwan Fraser Legal and Strathclyde Estate Agents to the Applicant acknowledging receipt of her instructions to market the property for sale.
- 2 By Notice of Acceptance of Application a Legal Member of the Tribunal 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 13 December 2024, to take place by teleconference. Notification was sent to the parties in accordance with Rule 17(2) of the Rules of Procedure.
 - 3 Said notification together with a copy of the application paperwork was served upon the Respondent by Sheriff Officers on 5 November 2024.
 - 4 Both parties were invited to make written representations in advance of the CMD. No written representations were received.

Case Management Discussion

- 5 The CMD took place on 13 December 2024 by teleconference. The Applicant was represented by Miss Nikki Brechany of TC Young Solicitors. The Respondent was not in attendance. The Tribunal noted that she had been given notification of the CMD in accordance with Rule 17(2) of the Rules and therefore determined to proceed in her absence.
- 6 The Tribunal explained the purpose of the Case Management Discussion and the legal test and asked for the submissions on the application from Miss Brechany. For the avoidance of doubt the following is a summary of the submissions made and does not constitute a verbatim account of the discussion.
- 7 Miss Brechany explained that the Applicant sought an eviction order under section 33 of the 1988 Act. The Applicant had let the property to the Respondent in terms of a short assured tenancy. The tenancy had been terminated on 31st March 2024 by service of a notice to quit. In terms of section 33(1)(d) of the 1988 Act notice had also been given to the Respondent that possession of the property was required as at that date. The notices were served by recorded delivery on 26th January 2024. Tacit relocation was no longer in operation and no contractual tenancy was in existence. The Applicant had therefore complied with section 33 of the 1988 Act.

- 8 Miss Brechany then proceeded to address the reasonableness of making an eviction order. She explained that the Applicant was aged 50 and worked as a teaching assistant. Her reason for recovering possession of the property was to sell the house. The Applicant had a mortgage over the property, the term of which had expired in August this year. Her mortgage payments had risen from £189.91 per month to £486.96 per month as a result. The rent for the property was £550 per month. It was no longer viable for her to continue to let the property and she was seeking to recover possession in order to sell. Miss Brechany explained that the Applicant and her family wished to move closer to her parents and her siblings but were unable to do so at present. The sale of the property would assist them in this regard. Miss Brechany confirmed that the Applicant owned three properties in total, one of which was likely to be her own home.
- 9 Miss Brechany provided information regarding the Respondent's personal circumstances. She explained that the Respondent was in her mid-40s with two teenage children. She worked part-time but the Applicant did not know her occupation. The Respondent was in receipt of housing benefit. Miss Brechany advised that there had been communication between the parties in January this year. The Respondent had advised the Applicant's husband that she was happy to comply with the notice to quit, but had been told by the local authority that the documents were not correct. The local authority appeared to believe that the tenancy was a private residential tenancy, as opposed to a short assured tenancy. This had since been clarified and the issue resolved. The Respondent had then advised the Applicant in March that she was waiting to be rehoused by the local authority. In July the Applicant's husband had received a message from the Respondent asking if the Tribunal proceedings were any further forward. It therefore appeared that the Respondent was awaiting rehousing with the local authority.
- 10 The Tribunal asked Miss Brechany if she would have any objection to a suspension of the execution of the eviction order, were the Tribunal minded to grant same, to give the Respondent sufficient time to obtain alternative accommodation. Miss Brechany advised that she did not have instructions on this point but understood it would be at the Tribunal's discretion.
- 11 The Tribunal then held a short adjournment of the proceedings to deliberate, at which point Miss Brechany left the call, before resuming the CMD and confirming its decision.

Relevant Legislation

- 12 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 end;

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.”

13 The following provisions of the Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No.3, Amendment, Saving Provision and Revocation) Regulations 2017 are also relevant to this decision:-

6. Savings provision

Despite the amendments made by section 75 and paragraphs 1, 2 and 3 of schedule 5 of the 2016 Act, sections 12, 32 and 33 of the 1988 Act have effect on and after 1st December 2017 as they had effect immediately before that date but only in relation to—

(a) a short assured tenancy (within the meaning given in section 32(1) of the 1988 Act) which was created before 1st December 2017 and continues in existence on that date;

(b) a new contractual tenancy (within the meaning given in section 32(3)(b) of the 1988 Act) which came into being before 1st December 2017 and continues in existence on that date; and

(c) a new contractual tenancy (within the meaning given in section 32(3)(b) of the 1988 Act) which comes into being on or after 1st December 2017 at the end of a short assured tenancy which is a short assured tenancy in a case mentioned in paragraph (a) or (b).

Findings in Fact and Law

14 The Applicant entered into a tenancy agreement with the Respondent dated 2 October 2015, the term of which was 30 October 2015 to 31 October 2016 and monthly thereafter. The Respondent was provided with a Form AT5 prior to signing the said Tenancy Agreement.

- 15 The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 16 On 25 January 2024 the Applicant delivered to the Respondent a notice under section 33 of the Housing (Scotland) Act, stating that the Applicants required the property back by 31 March 2024, and a notice to quit which sought to terminate the tenancy as at that same date.
- 17 The notice to quit included the prescribed information required under the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988.
- 18 The notices were delivered by recorded delivery mail.
- 19 The notice to quit terminates the tenancy as at 31 March 2024 which is an ish date under the terms of the tenancy agreement.
- 20 The Applicant requires vacant possession of the property in order to sell the property.
- 21 The Applicant has a mortgage over the property. The fixed rate mortgage term expired in August 2024. The Applicant's mortgage payments have since increased from £189.91 per month to £486.96 per month.
- 22 The contractual rent for the property is £550 per month.
- 23 It is no longer financially viable for the Applicant to continue to rent the property.
- 24 The Applicant has engaged solicitors and estate agents to market the property for sale.
- 25 The sale of the property will assist the Applicant and her family to purchase a property closer to the home of the Applicant's parents and her siblings.
- 26 The Respondent is in her mid-40s. The Respondent resides with two teenage children. The Respondent is in part-time employment and receives housing benefit.
- 27 The Respondent has sought assistance from the local authority with rehousing. The making of an eviction order will likely assist the Respondent in progressing her application for council housing.

Reasons for Decision

- 28 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 prejudicial to the interests of the parties. The Respondent had been given notification of the CMD. She had been given the opportunity to participate in the CMD and make written

representations but had failed to do so. Accordingly, taking into account the overriding objective to avoid delay in Tribunal proceedings insofar as compatible with proper consideration of the issues the Tribunal considered it could proceed to make a decision in her absence.

- 29 The Tribunal was satisfied based on the application paperwork that the tenancy between the parties was a short assured tenancy, and that the Respondent had received a notice to quit terminating the tenancy as at the ish of 31st March 2024 and a notice under section 33(1)(d) of the 1988 Act. 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 those factors relevant to the question of reasonableness.
- 30 The Tribunal considered the Applicant's circumstances, noting that her mortgage term had come to an end in August of this year and her mortgage payments had significantly increased. This had placed her in a precarious financial position and the Tribunal accepted that it was her intention to sell the property in order to mitigate against any future financial loss. She had provided evidence in the form of correspondence from solicitors and estate agents that she had engaged regarding the sale of the property in support of this. This was a factor to which the Tribunal gave significant weight. The Tribunal also took into account the fact that the sale of the property would assist the Applicant to purchase a new home in a location close to her family members.
- 31 The Tribunal also had regard to the Respondent's personal circumstances, noting that she resided with two teenage children and was in part time employment, with an entitlement to housing benefit. The Tribunal took into account the fact that the Respondent had resided in the property for approximately nine years. Whilst the Respondent had not provided this information, the Tribunal accepted the submissions on behalf of the Applicant on these matters in the absence of any evidence to the contrary.
- 32 Whilst the impact of eviction on the Respondent and her family was a cause for concern, ultimately the Tribunal accepted that she had taken steps to obtain rehousing with the local authority and appeared to be awaiting the outcome of the Tribunal proceedings in order to progress this. The Tribunal was satisfied that the making of an eviction order would assist her in this regard, by prioritising her for rehousing in the social rented sector.
- 33 Accordingly having weighed up those factors that were relevant to the question of reasonableness the Tribunal concluded that the provisions of section 33 of the 1988 Act had been met and it would be reasonable to make an eviction order. However, having regard to the upcoming festive period, and the length of time the Respondent had occupied the property, the Tribunal considered it would be reasonable to suspend execution of the order until 31st January 2025 to provide the Respondent with sufficient time to be suitably rehoused by the local authority.

34 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

13 December 2024

Legal Member/Chair

Date