Housing and Property Chamber
First-tier Tribunal for Scotland

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/24/2418

Re: Property at 23 Whitecraig Avenue, Whitecraig, Musselburgh, East Lothian, EH21 8PE ("the Property")

Parties:

Mr Lindsay Black, Mrs Marie Black, Ardlamont, 8 Y Vaarney Yiarg, Castletown, Isle of Man, IM9 1HZ, Isle of Man ("the Applicant")

Ms Deborah McNaught, 23 Whitecraig Avenue, Whitecraig, Musselburgh, East Lothian, EH21 8PE ("the Respondent")

Tribunal Members:

Petra Hennig-McFatridge (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that that the order for recovery of possession should be granted.

A Background:

[1] The application for an order for Possession on Termination of a Short Assured Tenancy in terms of S 33 of The Housing (Scotland) Act 1988 was made on 28 May 2024.

[2] The following documents were lodged by the Applicant prior to the date of the Case Management Discussion (CMD):

1. Copy Tenancy Agreement commencing 16 November 2017
2. AT5 document for Respondent dated 6 November 2017 and countersigned 11 December 2017

3. Notice to Quit for Respondent dated 5 March 2024 with date of removal of stated as 15 May 2024 and cover letter.
4. S 33 Notice to the Respondent dated 7 March 2024 with date of vacating premises of 15 May 2024 and cover letter.
5. AT6 notice dated 7 March 2024 on ground 12.
6. Rent statement up to and including 15 July 2024
7. S 11 Notice to the Local Authority and email confirming sending of same on 1 August 2024 as well as proof of receipt by local authority on the same day.
8. Receipt for posting the Notice to Quit on 5 March 2024 and proof of delivery of the Notice to Quit on 7 March 2024.
9. Recorded delivery slip for S 33 notice and AT6 notice on 8 March 2024. Letter from Respondent dated 28 July 2024 confirming the Notice to Quit and S 33 notice had been received in good order.

The documents are referred to for their terms and held to be incorporated herein.

[3] A Case Management Discussion (CMD) had been fixed for 10 February 2025 and the notification served on the Respondent on 6 January 2025 by Sheriff Officers

B The Case Management Discussion:

[4] The CMD took place on 10 February 2025. The CMD took place by teleconference and both Applicants attended. The Respondent did not take part. The legal member explained the purpose of the Case Management Discussion.

[5] The Applicants explained that the Respondent had initially contacted them to ask for a Notice for the property as she could not afford it . There had been a report about a matter with the roof in August 2023 and this was the last time the Respondent had granted the Applicants access to the property. Since then they had repeatedly contacted her to arrange access but she had cancelled last minute on these occasions. As per the rent statement there had been a consistent problem with rental payments and in the last 5 months no rent had been paid at all. The arrears now stand at £3,528. The Applicants are aware that the Respondent is in receipt of benefits for her health and does not work but they do not know which benefits these are as she used to pay her rent to them rather than have it paid through the DWP. The property is a 3 bedroom semi detached property and the Respondent is the only tenant and occupant. She has no children living with her.

C Findings in Fact:

1. The Applicant and the Respondent entered into a Short Assured Tenancy on 16 November 2017 for an initial period of and date of 15 May 2018 and continued thereafter from month to month (clause 1).
2. Document AT5 was sent to the Respondent on 6 November 2017 before the tenancy commenced but only returned by her signed on 11 December 2027.
3. The notice period stated in clause 1 for termination of the contractual tenancy by the landlord is 2 months.
4. The Applicants served a Notice to Quit for the property by 15 May 2024 on 6 March 2024.
5. Tacit relocation is not operating due to the Notice to Quit.

6. Notice in terms of S 33 (1) d of The Housing (Scotland) Act 1988 was served on the Respondent on 7 March 2024 advising of the intention to repossess the premises on 15 May 2024. Receipt was confirmed by the Respondent.
7. Notice to the Local Authority was given in terms of S 11 of the Homelessness Etc (Scotland) Act 2003.
8. The Respondent continues to occupy the property at the date of the CMD on 10 February 2025.
9. The Respondent lives at the property without any dependents.
10. The Applicant seeks to sell the property to raise funds.
11. There is a long history of rent arrears of varying amounts from 16 April 2020 to date and the arrears now stand at £3,528 as of the date of the CMD.
12. The Applicants are reasonably entitled to use the process under S 33 to gain repossession of the property in these circumstances.
13. The Respondent is actively looking for alternative accommodation and had intimated to the Applicants that she cannot afford the property.

D Reasons for the Decision:

[1] The Tribunal considered that the material facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—
(a)in any place where a hearing may be held;
(b)by videoconference; or
(c)by conference call.
(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.
(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—
(a)identifying the issues to be resolved;
(b)identifying what facts are agreed between the parties;
(c)raising with parties any issues it requires to be addressed;
(d)discussing what witnesses, documents and other evidence will be required;
(e)discussing whether or not a hearing is required; and
(f)discussing an application to recall a decision.
(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—
(a)may make a decision without a hearing if the First-tier Tribunal considers that—
(i)having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
(ii)to do so will not be contrary to the interests of the parties; and
(b)must make a decision without a hearing where the decision relates to—
(i)correcting; or
(ii)reviewing on a point of law,

a decision made by the First-tier Tribunal.
(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The documents lodged are referred to for their terms and held to be incorporated herein.

[2] The Respondent has not made any representations and did not attend the CMD. The Respondent had fair notice of the representations of the Applicant forming the reasons for the application and has not challenged these. As no representations were received from the Respondent by the Tribunal, the facts of the case are not in dispute. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case. The Respondent was made aware that the Tribunal could consider the case on its merits and make a decision at the CMD. No defence was lodged to the application.

[3]. The documents lodged are referred to for their terms and held to be incorporated herein. The documents lodged evidenced sufficiently the matters required to determine whether the legal tests for an order in terms of S 33 of the Housing (Scotland) Act 1988 are met.

[4] The legal test for an eviction order is set out in S 33 of the Housing (Scotland) Act 1988 as amended by the Coronavirus (Scotland) Act 2020.

[5] In terms of S 33 (1) of the Housing (Scotland) Act 1988 an order for possession of the house under a Short Assured Tenancy shall be made if the Tribunal is satisfied that:

1. The short assured tenancy has reached its ish
2. That tacit relocation is not operating
3. That there is no further contractual tenancy in existence
4. That the landlord has given to the tenant notice that he requires possession of the house.
5. That it is reasonable in all the circumstances to grant the order.

[6] The facts of the case are not in dispute. Fair notice of all aspects of the Applicant's case had been provided to the Respondent. The Respondent did not oppose the granting of the order. The dates and documents served as stated above were not in dispute. The Tribunal was satisfied on the basis of the documents lodged that that all requirements for recovery of possession in terms of the Housing Scotland Act 1988 had been complied with.

[7] The tenancy document and AT5 document show that the tenancy is a Short Assured Tenancy which has reached its ish. The Applicant had served a notice to quit with the required notice period. The end date for the initial period of the Short Assured Tenancy was stated as 15 May 2018 with a monthly continuation thereafter. 15 May 2024 was a valid ish date of the tenancy. Tacit relocation does not operate. The landlord had served on the Respondent a notice in terms of S 33 (1) d of the Housing (Scotland) Act 1988 with the required 2 months notice period. The Notice to Quit ended the contractual tenancy at an ish date and thus the tenancy became a statutory

assured tenancy in terms of S 16 of the Housing (Scotland) Act 1988.The service was carried out by recorded delivery.

[8] Even if the formal tests of S 33 (1) of the Housing (Scotland) Act 1988 are met, the Tribunal still has to consider whether it is reasonable in all the circumstances to grant the eviction order. In the case of *City of Glasgow District Council v Erhaiganoma* 1993 SCLR 592, The Inner House of the Court of Session stated at page 594 that "Where prima facie reasonableness has been made out, we think that it is then for the tenant to put circumstances before the court to show otherwise.". In this case the Tribunal notes that the Respondent had advised the Applicants that she could no longer afford the property. There had been contact with the Housing Officer. There was no opposition to the application and the Respondent did not put forward any reasons why it would not be reasonable to grant the order. The Applicants have a legitimate purpose in wishing to sell the property. The Respondent had been consistently in arrears of rent for a period of almost 5 years. She is in receipt of benefits but has consistently not paid the full rent on time and made no payments in the last 5 months. The Respondent did not challenge the reasonableness of an order being granted. The process of re-gaining control of the property for the Applicants has to date taken almost one year.

[9] The Tribunal thus considered that on balance and taking into account all the information available it is reasonable to grant the eviction order. The decision was unanimous.

Decision:
The Tribunal grants the order for recovery of possession.

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.

P Hennig-McFatridge

P Hennig McFatridge
Legal Member/Chair

10 February 2025
Date