



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 (“the 1988 Act”) and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/24/3628

Re: Property at 18 Earlston Avenue, Dundee, DD4 0TH (“the Property”)

Parties:

Mr Gavin Balfour, 88 Restenneth Drive, Forfar, DD8 2DB (“the Applicant”)

Ms Dawn Reid, Mr Derek Westwater, 18 Earlston Avenue, Dundee, DD4 0TH; UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for the order for possession should be granted.

Background

1. The application received on 8 August 2024 sought an eviction order under Rule 66 on the basis that the Short Assured Tenancy had been brought to an end by service of the relevant notices. Supporting documentation was submitted, including a copy of the tenancy agreement, AT5, Notice to Quit, Section 33 Notice and section 11 Notice to the local authority. The Short Assured Tenancy began on 7 June 2012.
2. Following initial procedure, the application was accepted by the Tribunal on 28 August 2024 and notified to the first-named Respondent by Sheriff Officer on 31 January 2025. The second-named Respondent was found to no longer reside at the Property and his forwarding address was not known. Accordingly, service was effected on the second-named Respondent by way

of Service by Advertisement on the Tribunal website from 7 February 2025 until 11 March 2025 (the date of the Case Management Discussion) ("CMD")

3. On 10 February 2025, written representations were received from the first-named Respondent by email and circulated to the Applicant. No representations were lodged by the second-named Respondent.
4. The Applicant advised prior to the CMD that he would be represented at the CMD by Mr Neil Dymock of Dymock Properties but that the Applicant would also be in attendance.

Case Management Discussion

5. The Case Management Discussion ("CMD") took place by telephone conference call on 11 March 2025 at 10am and was attended by the Applicant, Mr Gavin Balfour, and his representative, Mr Neil Dymock of Dymock Properties, and by the first-named Respondent, Ms Dawn Reid. The second-named Respondent was not in attendance.
6. Following introductions and introductory comments by the Legal Member, reference was made to the written representations lodged by Ms Reid and the Legal Member explained that service of the application on the second-named Respondent, Mr Derek Westwater, had been carried out by way of advertisement on the Tribunal website for the required period. Ms Reid confirmed that she was not opposed to the eviction, and understands the Applicant's wish to sell the Property, but was looking for an extension on the eviction date to allow her to secure alternative accommodation.
7. Ms Reid explained her family circumstances briefly, as detailed in her written representations. Although she lives alone, she currently has her grandchildren staying with her several nights per week, due to her daughter/their mother's ill health. The Property is a two-bedroom property and she hopes to secure a two-bedroom property from the local authority, so she can continue to accommodate her grandchildren, but does not know whether this will happen or not. She is unable to look at another private let, due to the costs. The Respondent confirmed that she has been in contact with the local authority about social housing since she was served with notice, but does not currently have any priority status and has been told that this will only progress if an eviction order is issued by the Tribunal and a date for eviction known. She stated that it is stressful and that she is basically caught in a 'catch 22' situation.
8. On behalf of the Applicant, Mr Dymock said that the Applicant appreciates Ms Reid's position but does wish to recover and sell the Property as soon as possible. He referred to the notices having been served in May 2024, with the notice period expiring in August 2024 and that we are now at March 2025. That said, the Applicant was open to a discussion about the eviction date, but would ask that any extension be a relatively short one. In his experience, Ms

Reid's case will not be escalated by the local authority until an eviction order is granted and the eviction date is to be relatively soon.

9. Ms Reid confirmed that she is not looking for a long extension and a period of 6 to 8 weeks from now is what she had been thinking.
10. The Tribunal Members adjourned briefly to consider the application in private and, on re-convening, confirmed that the Tribunal was in agreement that the application was in order and, given the agreed position of the parties, that the eviction order sought would be granted, subject to a two week extension being added to the usual 30 day appeal period, taking the eviction date to just over 6 weeks from now. The Legal Member advised that the earliest eviction date to be specified in the order would be 24 April 2025. Ms Reid requested the decision in writing by email so that she could progress matters with the local authority. She also confirmed that, if she was in a position to move out quicker than that date, she would communicate this to the Applicant and do so. Parties were thanked for their attendance and participation at the CMD.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the joint tenant of the Property by virtue of a Short Assured Tenancy which commenced on 7 June 2012.
3. The Applicant ended the contractual tenancy by serving on the Respondent a Notice to Quit and Section 33 Notice dated and posted by special delivery/recorded mail on 23 May 2024 (delivered 29 May 2025), specifying the end of the notice period as 6 August 2024, an ish date in terms of the lease. Both notices were in the correct form, provided sufficient notice and were served validly on the Respondent.
4. The second-named Respondent moved out of the Property some years ago.
5. The first-named Respondent has remained in possession of the Property following expiry of the notice period.
6. This application was lodged with the Tribunal on 8 August 2024, following expiry of the notice period.
7. The Respondent did not contest the application but the first-named Respondent sought an extension on the eviction date to allow her application for social housing to progress.
8. The Applicant wishes to recover the Property as he intends to sell for financial reasons as soon as possible but was amenable to a short extension on the eviction date.

Reasons for Decision

1. The Tribunal was satisfied that pre-action requirements including the service of the Notice to Quit and Section 33 Notice in terms of the 1988 Act had been properly and timeously carried out by the Applicant prior to the lodging of the Tribunal application.
2. Section 33(1) of the Act states that an order for possession shall be granted by the Tribunal if satisfied that the short assured tenancy has reached its finish; that tacit relocation is not operating; that the landlord has given to the tenant notice stating that he requires possession of the house; and that it is reasonable to make an order for possession. The Tribunal was satisfied that all requirements of Section 33(1) had been met.
3. As to reasonableness, the Tribunal considered the background to the application, the first-named Respondent's written submissions and the oral representations made on behalf of the Applicant and by the first-named Respondent at the CMD. The Tribunal was satisfied that the Applicant's reason for wishing to recover possession of the Property was that he required to sell the Property due to financial reasons and noted that he had lodged supporting documentation regarding his rising mortgage costs in recent years. The Tribunal also took into account the circumstances of the first-named Respondent and her close family members and noted, in particular, that she was already in contact with the local authority to seek re-housing and had made them aware of her circumstances. The first-named Respondent accepted the Applicant's position and did not contest the eviction. The second-named Respondent no longer resides in the Property and has not entered into the Tribunal process. Although the Applicant wishes to sell as soon as possible due to his own circumstances, his representative confirmed that he was amenable to a short extension on the eviction date to assist the Respondent in securing alternative accommodation through the local authority.
4. In all of the circumstances, the Tribunal considered that it was reasonable to grant the eviction order sought, subject to an extension of the usual implementation date of the eviction order by two weeks, namely until 24 April 2025, to give additional time for suitable social housing to be identified for the Respondent.

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.

N Weir

Legal Member/Chair

Date:11 March 2025