



**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/21/2768

Property: 1 Easter Caputh Farm Cottage, Murthly, Perth PH1 4LA ("Property")

Parties:

**Grandpond Limited, Easter Caputh Farmhouse, Murthly, Perthshire PH1 4LA
("Applicant")**

**Watson & Lyall Bowie, Union Bank building, Coupar Angus PH13 9AJ
("Applicant's Representative")**

**Gillian Redman, 1 Easter Caputh Farm Cottage, Murthly, Perth PH1 4LA
("Respondent")**

Tribunal Members:

Joan Devine (Legal Member)

Elizabeth Currie (Ordinary Member)

Decision

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

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E dated 8 November 2021. The documents produced were: Short Assured Tenancy Agreement constituted by offer from the Applicant's agent dated 28 January 2002 and acceptance signed by the Respondent on 29 January 2002; Notice signed by the Applicant's agent on 21 January 2002 and by the Respondent on 23 January 2002 under section 32 of the Housing (Scotland) Act 1988 ("AT5"); Notice to Quit and Notice in terms of section 33 of the 1988 Act both dated 5 February 2021 addressed to the Respondent; post office receipt evidencing delivery on 12 February 2021; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 30 November

2021 and certificate of service by Sheriff Officer evidencing service of the Application on the Respondent on 19 January 2022. The Respondent lodged with the Tribunal a written representation by email dated 18 February 2022.

Case Management Discussion

A case management discussion took place on 23 February 2022 at 11.30 am by conference call. The Applicant was represented by Kevin Lancaster of the Applicant's Representative and Alexa Mewse of Savills. The Respondent was in attendance.

The Tribunal noted the terms of the written representation for the Respondent in which she submitted that the Notice to Quit was invalid as it made reference to the need to obtain an order for possession from the Court when reference should have been made to the First-tier Tribunal for Scotland (Housing and Property Chamber). Mr Lancaster submitted that the Notice to Quit was sufficient to satisfy the requirements of the 1988 Act and no prejudice had been caused to the Respondent. The Tribunal asked the Respondent what she understood the documents to mean when she received the Notice to Quit and section 33 notice. She said that she understood that she was to be evicted.

The Respondent told the Tribunal that she had lived in the Property for 20 years. She lived alone. She said that she suffered from ill health and anxiety. She told the Tribunal that she had identified alternative accommodation which had been reserved for her. The current occupiers would vacate on 20 April 2022. The earliest she could move in was 21 April 2022. She said that she required assistance with moving and that help was being provided by the Salvation Army and Social Services.

Mr Lancaster said that he had been made aware that the Respondent had found alternative accommodation. He said that the Applicant was content to defer the operation of an order for eviction until 1 May 2022 to allow time for the Respondent to move. Mr Lancaster told the Tribunal that the Applicant required possession of the Property to house an employee who had been taken on to replace an employee who was terminally ill and who lived in a property elsewhere on the Applicant's land. He said that the Applicant was sympathetic to the Respondent's situation which was why plenty of notice had been given in the Notice to Quit and section 33 notice.

The Tribunal asked the Respondent if she was going to move into the alternative accommodation identified by her. She said that she was. The Tribunal asked the Respondent if, in those circumstances, she was willing to allow an order for possession to be granted on the basis it could not be enforced before 2 May 2022 (1 May being a Sunday). She said that would be fine.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement dated 28 and 29 January 2002.
2. The Applicant's agent and the Respondent had signed the form AT5 on 21 and 23 January 2002 respectively.
3. The tenancy was for a period of 6 months from 1 February 2002 and continued thereafter on a month to month basis.
4. A Notice to Quit dated 5 February 2021 was served on the Respondent on 12 February 2021 stating that the tenancy would terminate on 1 September 2021.
5. A Notice in terms of Section 33 of the 1988 Act dated 5 February 2021 was served on the Respondent on 12 February 2021 stating that possession of the property was required on 1 September 2021.
6. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 30 November 2021.
7. Notice of the date of the hearing had been given to the Respondent on 19 January 2022.

Reasons for the Decision

The Tribunal determined to make an Order for possession of the Property in terms of Section 33 of the 1988 Act. The Tribunal noted that the tenancy had been properly created as a short assured tenancy. The Tribunal noted that a Section 33 Notice had been served on the Respondent giving more than six months' notice that the Applicant required possession of the Property. The Tribunal noted the minor defect in the Notice to Quit but determined that the recipient of the noticed had understood the meaning of the Notice to Quit. The Notice had substantially the same effect as if it had not contained the erroneous reference to "the court". As the Parties had agreed to an order being granted, and the Respondent had arranged alternative accommodation, the Tribunal determined that it was reasonable to issue an eviction order with execution being delayed until 2 May 2022.

Decision

The Tribunal grants an Order for possession of the Property with execution being delayed until 2 May 2022.

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.

J Devine

Legal Member

Date : 23 February 2022