

**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/23/0320

Re: Property at 50 Woodlands Terrace, Dundee, DD4 9BA (“the Property”)

Parties:

**Mr Robert Banks, Harlyn House, Penpol Avenue, Hayle, Cornwall, TR27 HNQ
 (“the Applicant”)**

**Mr Lawrence McVeigh, 50 Woodlands Terrace, Dundee, DD4 9BA (“the
Respondent”)**

Tribunal Members:

Gillian Buchanan (Legal Member) and Linda Reid (Ordinary Member)

Decision

At the Case Management Discussion (“CMD”), which took place by telephone conference on 1 June 2023, the Applicant was represented by Mr Alex Campbell, of Campbell Boath, Solicitors, Dundee and the Respondent was represented by Mr Kenneth Marshall of Dundee Law Centre.

Prior to the CMD the Tribunal had received from Campbell Boath an email and letter dated 17 May 2023 with a handwritten letter from Mr Bruce Doig attached dated 15 May 2023.

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:-

Background

- i. Mrs Elizabeth Cooper leased the Property to the Respondent in terms of a Short Assured Tenancy Agreement (“the SAT”) signed on 27 April 2009 and that commenced on 1 May 2009.
- ii. The initial term of the SAT was agreed to be from 1 May 2009 to 1 November 2009 and the parties agreed that the tenancy would continue thereafter on a month to month basis (Clause 2).

- iii. The rent payable in terms of the SAT was agreed to be £460 per month.
- iv. On 27 October 2022, the Applicant served on the Respondent by Sheriff Officers a Notice to Quit and a Notice under Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") requiring the Respondent to remove from the Property by 1 January 2023.
- v. That the Applicant has served on Dundee City Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- vi. Mrs Elizabeth Cooper died on 7 January 2021.
- vii. The Applicant is Mrs Cooper's son.
- viii. Mr Bruce Doig is Mrs Cooper's brother.
- ix. The Applicant and Mr Bruce Doig are Mrs Cooper's joint executors and trustees in terms of her Will dated 11 October 2006.

CMD

At the CMD the Tribunal heard the following representations on behalf of the parties:-

For the Respondent Mr Marshall initially stated:-

- i. The Respondent suffers from extreme anxiety.
- ii. The current eviction process is causing him a great deal of stress and according to the Respondent is "messaging with his head".
- iii. Mr Marshall is assisting the Respondent in trying to find accommodation in the social sector.
- iv. The Respondent has declined two offers of accommodation which he did not consider suitable.
- v. He is 62 years of age.
- vi. He does not consent to the grant of an eviction order but adopts a neutral stance leaving the Tribunal to consider whether the granting of an eviction order is reasonable.

For the Applicant, Mr Campbell stated:-

- i. The Respondent is in arrears of rent totalling £1800, being rent due between February and May 2023.
- ii. The Property requires to be sold to meet an inheritance tax liability due by Mrs Cooper's estate understood to be of approximately £260,000.
- iii. Mr Campbell's firm has already sold 3 of 5 properties in Dundee owned by the late Mrs Cooper. The tenants of these properties removed and they were sold with vacant possession.
- iv. One other property is on the market for sale with a sitting tenant. Mr Campbell believed that property should attract significant interest. It has been on the market for several months.
- v. The Property is the last of the 5 properties to be sold.
- vi. Mr Campbell was not aware of any mortgages on the five properties.
- vii. Mr Campbell's firm is dealing with the late Mrs Cooper's estate in Scotland. He was not sure of the division of the inheritance tax liability between her estates in Scotland and in England but believed the liability would arise due to the Scottish element of her estate. He was not aware of the late Mrs Cooper having any other estate in Scotland.
- viii. The Property cannot presently be sold due to the Respondent refusing access for surveyors and for necessary safety checks to be done. It is for that reason this

application has been made. Mr Campbell believed the Respondent may have allowed one tradesperson access with difficulty.

For the Respondent, Mr Marshall made the following further submissions:-

- i. The Respondent lives alone.
- ii. He is unfit for work.
- iii. He is in receipt of Employment Support Allowance.
- iv. He was in receipt of Housing Benefit.
- v. Mr Marshall was unaware of the rent arrears due.
- vi. The Property is not adapted.
- vii. The Respondent has mental health issues and bad asthma.

Findings in Fact

- i. Mrs Elizabeth Cooper leased the Property to the Respondent in terms of the SAT that commenced on 1 May 2009.
- ii. The initial term of the SAT was agreed to be from 1 May 2009 to 1 November 2009 and the parties agreed that the tenancy would continue thereafter on a month to month basis (Clause2).
- iii. The rent payable in terms of the SAT was agreed to be £460 per month.
- iv. On 27 October 2022, the Applicant served on the Respondent by Sheriff Officers a Notice to Quit and a Notice under Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") requiring the Respondent to remove from the Property by 1 January 2023.
- v. The Applicant has served on Dundee City Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- vi. Mrs Elizabeth Cooper died on 7 January 2021.
- vii. The Applicant is Mrs Cooper's son.
- viii. Mr Bruce Doig is Mrs Cooper's brother.
- ix. The Applicant and Mr Bruce Doig are Mrs Cooper's joint executors and trustees in terms of her Will dated 11 October 2006.
- x. The Property requires to be sold to meet an inheritance tax liability due by Mrs Cooper's estate of approximately £260,000.
- xi. Three of five properties in Dundee owned by the late Mrs Cooper have been sold with vacant possession.
- xii. One other property owned by the late Mrs Cooper is on the market for sale with a sitting tenant.
- xiii. The Property is the last of the five properties to be sold.
- xiv. The Respondent is 62 years of age. He suffers from mental health difficulties.
- xv. The Respondent lives alone.
- xvi. He is unfit for work.
- xvii. He is in receipt of Employment Support Allowance.
- xviii. He was in receipt of Housing Benefit.
- xix. The Respondent is trying to find accommodation in the social sector and has declined two offers of alternative accommodation.
- xx. It reasonable, in the circumstances, that an eviction order be granted in favour of the Applicant.

Reasons for Decision

The Respondent did not dispute the factual background narrated by the Applicant within the application papers and orally by Mr Campbell at the CMD. That background was therefore accepted by the Tribunal.

The Tribunal considered whether or not it would be reasonable to grant an eviction order and determined that it is reasonable to grant an eviction order under Section 33 of the 1988 Act.

The Tribunal took into account the need for the executors of the late Mrs Cooper to administer and wind up her estate and pay any inheritance tax liability due. The Tribunal considered the Respondent's neutral stance in relation to these proceedings and the fact he is actively exploring the availability of alternative accommodation in the social sector with two offers of accommodation having been made and declined.

The tribunal had regard to the extended period of time that the Respondent would have to secure alternative accommodation given the terms of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022.

In all of the circumstances it is reasonable to grant an eviction order.

Decision

The Tribunal granted an eviction order in favour of the Applicant

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.

Date: 1 June 2023

Legal Member/Chair