



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/22/1713

Re: Property at 96 Hillhead Drive, Airdrie, ML6 9JZ (“the Property”)

Parties:

Mrs Jane Harkin, Gu-Nainm, Mollinsburn Road, Glenboig, ML5 2QE (“the Applicant”)

Mr David Moore, 96 Hillhead Drive, Airdrie, ML6 9JZ (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and Leslie Forrest (Ordinary Member) (“the tribunal”)

Decision

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

Background

- 1. This is an application under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”) for recovery of possession of the Property. It is dated 6th June 2022.**
- 2. The application was accepted for determination on 1st December 2022.**

Case Management Discussion

- 3. A case management discussion was held by teleconference on 1st March 2023.**
- 4. The Applicant was present.**

5. The Respondent was present and was represented by his wife, Mrs Sharon Moore.

Preliminary Matters

6. The legal member explained the purpose of a case management discussion.

7. The Applicant said that the Respondent was still residing in the Property and Mrs Moore said that the local authority would not house her family until an eviction order had been granted.

8. Findings in Fact

- 8.1 The Applicant and the Respondent are parties to a short assured tenancy agreement in respect of the Property dated 4th November 2009.

- 8.2 The term of the tenancy was for a period of six months from 4th November 2009 to 4th May 2010 (both dates inclusive).

- 8.3 The tenancy agreement provided for the tenancy to continue on a month to month basis if it was not brought to an end on 4th May 2010 and there was a provision that it could be terminated by either party giving two months' notice to the other.

- 8.4 The Applicant served a Section 33 Notice and a Notice to Quit on the Respondent on 1st April 2022 requiring vacation of the Property by 6th June 2022.

- 8.5 Tacit relocation is not operating.

- 8.6 The Respondent remains in occupation of the Property.

- 8.7 The required notice in terms of the Homelessness etc. (Scotland) Act 2003 has been given to the local authority.

9. Findings in Fact and Law

- 9.1 The tenancy continued by tacit relocation from 4th May 2010 until it was brought to an end by service of the Notice to Quit on 1st April 2022.

- 9.2 The tenancy ended on 4th June 2022.

- 9.3 The Applicant is entitled to recover the Property because the tenancy has been brought to an end on an ish date.

- 9.4 It is reasonable for the order of eviction to be granted.

Documents

10. The Tribunal considered the documents which had been lodged with the application:

10.1 Copy of the short assured tenancy agreement dated 4th November 2009.

10.2 AT5 Form relating to the short assured tenancy.

10.3 Notice to Quit served on 1st April 2022 requiring the Respondent to leave the Property by 4th June 2022.

10.4 Section 33 Notice served on 1st April 2022.

10.5 Sheriff Officer's certificate of citation in respect of service of the Notice to Quit and Section 33 Notice.

10.6 Copy of Notice to local authority under Section 11 of the Homelessness etc (Scotland) Act 2003.

Applicant's Position

11. Mrs Harkin said that she had owned the Property since 2008 and that the Respondent and his family had been tenants since 2009. She said that the rent of £550 per month had not been increased since commencement of the tenancy.

12. Mrs Harkin said that she had a buy to let mortgage for the Property which required her to pay only interest but that the term had come to an end. She said that her lender had allowed this to be extended for twelve months and that, because of increased interest rates, she was now paying £517 per month whereas previously it had been £243. She said that the lender's extension would expire in a few months and that she would then need to transfer to a capital and interest mortgage and that the payments would be in the region of £1000 per month. She said that the additional costs which she has for the Property are £32 for gas maintenance and £37 for buildings insurance. She said that she also had expenses for gas and electrical checks.

13. Mrs Harkin said that she is sixty five years of age, has no income and is living from savings which are dwindling. She said that, even with the current outgoings for the Property, it is not sustainable for her to continue as a landlord. She said that, when she has to take on a repayment mortgage, she will not be able to afford it.

14. Mrs Harkin said that the Respondent has been a good tenant but that she was forced to take the steps to recover the Property. She said that she does not own the home she lives in and has no other buy to let properties. She said that it is her intention to sell the Property to repay the mortgage of £97,000 and that she does not believe that there will be much left after the sale.

Respondent's Position

15. Mrs Moore said that she and her husband were very disappointed when told that the Applicant wanted to sell the Property. She said that it was her family home where she had raised her children.

16. Mrs Moore said that she and her husband had gradually come to terms with the situation and now want to move from the Property. She said that the Council will house the family but will not do so until there is an order for eviction. She said that she is confident that she will be housed in the area.

17. Mrs Moore said that she and her husband live in the Property with children aged 17,16 and 8. She said that two children have disabilities and the housing department of the Council have all the relevant information on the family.

18. Mrs Moore said that neither she nor her husband have been coerced in coming to the view that they do not want to oppose the application for eviction. She said that the Respondent wants to move forward and move to another property.

19. Mrs Moore said that she and her husband are unemployed and are in receipt of Income Support.

The Law

Section 33 Housing (Scotland) Act 1988

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 finish;

(b) that tacit relocation is not operating;

(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 two months, that period;

(ii) in any other case, two 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.

Discussion and Determination

20. The tribunal determined that the Applicant had properly served the notice to quit, that the Respondent had been given the appropriate

period of notice and that the appropriate notice had been given to the local authority in terms of the Homelessness etc (Scotland) Act 2003.

- 21. The tribunal determined that the tenancy had been brought to an end at the ish date by service of the notice to quit.**

- 22. The tribunal noted that, prior to the amendments to the 1988 Act, it would have no discretion and would have been required to grant the order of eviction. By virtue of the amendments introduced by the Coronavirus (Recovery and Reform) (Scotland) Act 2022, the tribunal does have discretion and requires to consider reasonableness.**

- 23. The tribunal did not consider that either party had additional evidence to put before it and that there was therefore no reason to arrange for an evidential Hearing to be arranged.**

- 24. The tribunal found both parties to be credible. They had each set out clearly their respective positions. The tribunal, in exercising its discretion, required to carry out a balancing act.**

- 25. The Applicant's financial position is that currently she has to subsidise the Property's costs from her own resources and that matters will become considerably worse when she has to take on a repayment mortgage.**

- 26. The Respondent has lived in the Property for over thirteen years and it is home for a family of five, two members of which have disabilities. The Respondent is confident that he and his family will be housed in the area and offered no opposition to the application for eviction.**

- 27. On balance, the tribunal determined that it was reasonable to grant the application and to make the order. In coming to its determination, the tribunal noted the particular circumstances of the Respondent and his family but also took into consideration the financial position of the**

Applicant. The tribunal also noted that the Respondent was not opposed to the granting of the order.

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.

Martin McAllister

**Martin J. McAllister
Legal Member
1st March 2023**