



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/22/3822

Re: Property at 22 Bodesbeck Court, Irvine, KA11 1LG (“the Property”)

Parties:

Mr Roy Sheils, Mrs Anne Sheils, Ballynameen Road, Garvagh, Coleraine, BT51 5PN (“the Applicants”)

Miss Stephanie Crain, 22 Bodesbeck Court, Irvine, KA11 1LG (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

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

Background

1.This application for a possession order in terms of Rule 66 of the Tribunal rules of procedure was first lodged with the Tribunal on 17th October 2022 and accepted by the Tribunal on 20th April 2023.A case management discussion was fixed for 23rd June 2023 at 2pm.

The Case Management Discussion

2.The Applicants did not attend the case management discussion but were represented by Miss Hughes of Hovepark Lettings Ltd. The Respondent attended the case management discussion and represented herself.



3.The Tribunal had sight of the initial application, a signed version of this application dated 17th November 2022, an email from the Applicants authorising Hovepark Lettings Ltd to represent them, a short assured tenancy agreement, a Form AT5, a Notice to Quit, a Notice in terms of Section 33 of the Housing (Scotland) Act 1988, an email dated 6th July 2022 sending these documents to the Respondent, proof of delivery of these documents to the Respondent on 8th July 2022, an email from the Respondent confirming that she had received the Notice to Quit by recorded delivery post, a Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 and an email dated 28th March 2023 intimating this to North Ayrshire Council.

4.The parties had entered into a short, assured tenancy at the property with effect from 31st January 2014 which ran until 31st July 2014. The tenancy continued on a monthly basis after the initial 6-month period until brought to an end by either party.

5.Miss Hughes advised that the Applicants are in their seventies and the first Applicant has been unwell. This together with inflation, the cost of living and increases in mortgage and insurance costs had led them to the view that they required to sell the property. The Respondent had been a very good tenant she said, and it was age, health and the cost of living which had prompted their decision to sell, and they were looking for vacant possession in order to go ahead with a sale of the property. Miss Hughes confirmed that the Respondent was the only tenant on the paperwork, but her partner lived with her and some of the documents sent to the Respondent in order to bring the tenancy to an end had also been sent to him.

6.The Tribunal Legal Member confirmed with the Respondent that she had received the application and accompanying paperwork. The Respondent was asked what her position was regarding a possession order, and she indicated that she understood the Applicants' position and was not seeking to object to an order being made. She did not wish to suggest that it would be unreasonable to grant a possession order.

7.The Respondent Miss Crain advised that she lived at the property with her partner, her adult stepson and her three children aged 1, 13, and 15. She has been advised that she could not be assisted to find a property for her and her family until she had an eviction date and understanding as to when she required to leave the property. She was contacted by a local housing association and had arranged a viewing of a property for the week after the case management discussion. She regarded this property as suitable for their needs and expected that she would enter into a tenancy at that property. She said that she had already started some packing and anticipated that she would require at least a month to move the whole family and their belongings from the property.



8. Miss Hughes for the Applicants advised the Tribunal that if a possession order was granted by the Tribunal the Applicants would be flexible on a date to take possession of the property as the Applicants wanted the Respondent and her family to have somewhere to go before, they were required to leave. She indicated that if an order was granted the Respondent could telephone her to discuss arrangements with her.

Relevant Legislation

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 over 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; and
 - (c)
 - (d) The landlord, (or where that 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 six 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 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 in 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

9. The Tribunal noted that the Cost of Living (Tenant Protection)(Scotland) Act 2022 was not relevant to this application as the appropriate Notices were served by the Applicant before 6th September 2022 and the Application was submitted to the Tribunal before the legislation came into force.

10. The Tribunal considered that it had sufficient information upon which to make a decision and that the proceedings had been fair.



Findings in Fact

11.The parties entered into a tenancy at the property with effect from 31st January 2014 for a six-month period.

12.This tenancy continued after the initial term on a monthly basis until brought to an end by either party.

13.The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.

14.On 6th July 2022 agents for the Applicants sent a Notice in terms of Section 33 of the Housing (Scotland) Act 1988 to the Respondent by email and by post stating that the Landlord required the property back by 30th September 2022.

15.This Notice in terms of Section 33 of the Housing (Scotland) Act 1988 was received by the Respondent by post on 8th July 2022.

16.On 6th July 2022 agents for the Applicants sent a Notice to Quit in the prescribed form by email and by post to the Applicant which sought to end the tenancy with effect from 30th September 2022.

17.This Notice to Quit was received by the Respondent by post on July 8th, 2022.

18.The Notice to Quit terminated the tenancy with effect from 30th September 2022 which is a valid end date for the tenancy.

19 Tacit relocation is not in operation in relation to this tenancy.

20.A notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was sent to North Ayrshire Council by email on 28th March 2023 in relation to this application.

21.The Applicants wish to sell the property due to increases in costs and age and health related issues.

22.The Respondent lives with her partner, adult stepson and three other children at the property.

23.The Respondent is aware of the Applicants' wish to sell the property and has taken steps to find another property for her and her family to live in.



24. The Respondent has arranged to view a property which is suitable for her family's needs in the week of 26th June 2023 and intends to leave the property within at least one month.

Reasons for Decision

25. The Tribunal was satisfied that the Respondent had been served with a valid notice to Quit and Notice in terms of Section 33 of the Housing (Scotland) Act 1988. These were clear in their terms and gave appropriate notice of when the property was required and when the tenancy would come to an end. The date given on the notices appeared to coincide with an ish or end date of the tenancy.

26. The Tribunal required to consider whether it was reasonable to grant an order. The Applicants wished to bring the tenancy to an end due to cost of living, ill health, and their ages. The Respondent understood their position, did not oppose an order being made, and was making plans to move out with her family and is viewing a property she is likely to rent which is regarded by her as suitable for their needs. In all of these circumstances the Tribunal considered that it was reasonable to grant a possession order for the property.

Decision

The Tribunal determined that a possession order be granted for the property.

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.

Legal Member/Chair

23.6.23

Date

Housing and Property Chamber
First-tier Tribunal for Scotland

