



**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/21/0927

Re: Property at 5 Torwoodhill, Rhu, Helensburgh, G84 8LE (“the Property”)

Parties:

Mrs Pauline Joseph, Ardarden House, Cardross, G82 5HD (“the Applicant”)

Ms Deborah Dooley, 5 Torwoodhill, Rhu, Helensburgh, G84 8LE (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member) and Tony Cain (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession should be granted in favour of the applicant. The tribunal delayed execution of the order until 30 September 2021.

Background

1. An application was received on 16 April 2021 under rule 66 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’) seeking recovery of possession of the property under a short assured tenancy by the applicant against the respondent.
2. Attached to the application form were:
 - (i) The short-assured tenancy agreement between the parties which commenced on 11 March 2016.
 - (ii) Copy form AT5 addressed to the respondent dated 11 March 2016.

- (iii) Copy notice required under section 33 of the 1988 Act ('the section 33 notice') dated 5 October 2020 and addressed to the respondent.
 - (iv) Copy Notice to Quit dated 5 October 2020 addressed to the respondent, requiring her to remove from the property on or before 11 April 2021.
 - (v) Royal Mail proof of delivery relating to the Notice to Quit and section 33 notice, confirming that it had been signed for on 6 October 2020.
 - (vi) Copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 with proof of sending by email to the local authority on 13 April 2021.
3. The application was accepted on 23 April 2021.

The case management discussion

4. A case management discussion (CMD) was held by teleconference call on 3 June 2021. The applicant was represented by Ms Renee Anderson of Lomond Letting Ltd. The respondent was not present or represented on the teleconference call. The tribunal proceeded with the CMD in the absence of the respondent in terms of rule 29 of the 2017 rules.
5. The tribunal noted that the applicant was the registered landlord for the property and was the sole landlord named on the tenancy agreement. The title deed showed that the property is owned jointly by the applicant and her husband, Mr Paul Joseph. The tribunal noted the handwritten letter signed by Mr Paul Joseph dated 14 May 2021 which had been produced by the applicant, in which he confirmed that he was aware of the current eviction application and that he was happy for this to proceed in the applicant's name.
6. The tribunal also noted that it was satisfied that the short-assured tenancy agreement between the parties had been validly constituted, and that the Notice to Quit and section 33 notice had been correctly served. These provided the correct amount of notice of vacant possession, being 6 months as now required in terms of section 33 (2) of the 1988 Act as amended by the Coronavirus (Scotland) Act 2020 ("the 2020 Act").
7. The tribunal noted that section 33 (1) of the 1988 Act as amended by the 2020 Act (in relation to any tenancy where notice was given after 7 April 2020) states:

(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.

8. The tribunal was satisfied that the short-assured tenancy had reached its end; that tacit relocation was not operating; and that the notices had been validly served on the respondent. The tribunal noted that, whereas previously in this situation it would have been required to make an order for recovery of possession, it must now consider whether it is reasonable to do so. In doing so, the tribunal must take into account all the circumstances of the case.
9. Ms Anderson told the tribunal that the applicant and her husband had been experiencing financial difficulties, as she had been unable to run her business since lockdown due to Covid-19 restrictions. They had therefore decided to sell the property to release funds. She was unable to provide more detailed information about the applicant's financial circumstances or the steps she had taken to sell the property. She said that the respondent had been a good tenant, and that the applicant was keen to do what she could to assist her. The tribunal also noted from the applicant's written representations that she had given the respondent first refusal on buying the property, but that she was not in a position to do this.
10. After some consideration, the tribunal felt that it did not have sufficient information before it to make a decision on the application. It recognised that this was a very difficult situation for all involved. It appeared that the respondent had been a good tenant who had paid the rent and had complied with the terms of her tenancy agreement. She was now at risk of homelessness through no fault of her own. It was difficult to assess the respondent's circumstances in her absence, and in light of the limited information available to the tribunal. It was also clear that the applicant wished to assist the respondent if possible. The applicant and her husband (and co-owner) also appeared to be experiencing financial difficulties, but again the information available to the tribunal about this was quite limited. There was a difficult balance to be struck in terms of deciding what was reasonable in these circumstances.
11. The tribunal therefore required further information about the applicant's circumstances, and preferably also information from the respondent, in order to make a decision. It therefore determined that a hearing to consider the issue of reasonableness was required in order to resolve the dispute between the parties. It also issued a direction to the parties requiring them to provide

further information that would help it to reach a decision, and inviting both parties to give oral evidence at the hearing.

12. Written representations, including a letter from the applicant's accountant, were received from the applicant in response to the direction on 6 July 2021. No response to the direction was received from the respondent.

The evidence

13. The following evidence was considered by the tribunal:

1. The application form received from the applicant on 16 April 2021.
2. The documents listed at paragraph 2 of this decision.
3. The response to the tribunal's direction of 12 May 2021 received from the applicant's representative on 18 May 2021.
4. The written representations received from the respondent on 6 July 2021.
5. The oral representations of the parties at the hearing.

Findings in fact

14. The tribunal made the following findings in fact:

- i. The applicant is the joint owner of the property.
- ii. The applicant is the landlord named in the short-assured tenancy agreement between the parties.
- iii. The applicant is the registered landlord for the property.
- iv. There was a short-assured tenancy in place between the applicant and the respondent. The tenancy commenced on 11 March 2016 for an initial period of 6 months, continuing on a month to month basis thereafter.
- v. The form AT5 was in the prescribed format and the short-assured tenancy agreement between the parties had been validly constituted.
- vi. The tenancy agreement provided that either party could terminate the tenancy by providing eight weeks' notice in writing.
- vii. The Notice to Quit and the section 33 notice contained the prescribed information and both were dated 5 October 2020. These notices stated that the applicant required vacant possession of the property on or before 11 April 2021.
- viii. The tenancy therefore reached its end on 11 April 2021.
- ix. The Notice to Quit and section 33 notice had been served on the respondent by recorded delivery on 5 October 2020 and signed for by the respondent on 6 October 2020, providing more than six months' notice of vacant possession.

The hearing

15. A hearing was held by teleconference call on 20 July 2021. The applicant was present, as was her representative, Ms Anderson. The respondent was present on the teleconference call and represented herself.

The applicant's submissions

16. The applicant told the tribunal that she and her husband had originally planned to sell the property in early 2019 and had actively taken steps to do so. On meeting with the respondent at around that time, however, they had decided not to sell the property then because the respondent clearly loved living in the property. They were also aware that it would be difficult for her to find another three bedroomed property in the area. As they were not then in a position where they needed to sell the property, they decided not to sell at that time, in order to give the respondent time to consider her options. They had however made it clear to her that it was their intention to sell the property at some point.
17. The applicant and her husband ran a dance school business. As a result of the lockdown due to covid-19 in March 2020, they were forced to close the business and had been unable to reopen until May 2021. As a result, their financial situation had become very difficult, and their household income had dropped substantially. This was confirmed in the letter from the applicant's accountant. Although the business was now up and running again, it would take some time to build it back up again. The applicant and her husband live with their four children aged between 12 and 21, together with the applicant's mother. The applicant had also lost her father in January 2021. The whole family was heavily reliant on the income from the applicant's business. She and her husband had been finding it very difficult to make ends meet and to pay their mortgage and other bills.
18. Having considered various other options, the applicant had come to the conclusion that the only way forward in order to keep her family in their own home was to sell the property. She and her husband owned another property in Glasgow, which had previously been their home and was now rented out. However, this flat was in a block which was currently undergoing major renovations. It was not therefore cost effective to sell that property at the moment, as confirmed in the letter provided by the applicant's accountant.
19. The applicant said that she was very concerned about the respondent. The respondent had been a good tenant and had always paid her rent. She had tried to assist her by asking friends to look out for other suitable properties for the respondent. She said that Ms Anderson had also offered her any of Lomond Lettings' properties which might be suitable. This was confirmed by

Ms Anderson. The respondent had not however taken up any of the properties offered.

20. The applicant felt that she had no alternative but to sell the property in order to address her family's difficult financial situation. Were they unable to do so, she said that she and her husband would be unable to pay their own mortgage and bills, and may face repossession of their family home. She and her husband had found a buyer who was very keen to obtain a home in the building where the property was situated. They wished to live in the property themselves, rather than to buy it with a sitting tenant.

The respondent's submissions

21. The respondent told the tribunal that she had previously worked in hospitality and had no employment for the past 18 months as a result of the covid-19 situation. She had been wrongly advised that she was not entitled to financial help as she had savings. She had continued to pay her rent from her savings, which had now been exhausted. She was now in receipt of benefits. She was living in the property with her two teenage sons.
22. She told the tribunal that she could not afford to move into other private rented accommodation and was looking for somewhere cheaper. This was the reason why she had not taken up the offers made by Lomond Letting. In light of her present experience, she also wished to find somewhere more permanent, which would provide her family with greater security. She had registered as homeless with the council in March 2021 and was on the waiting list for a council house. The council had told her that she would be provided with temporary accommodation if she had to leave the property before a permanent house became available.
23. She told the tribunal that she did not want to stay in the property, and that she understood why the applicant had raised tribunal proceedings for eviction. She said she was not objecting to this. She was however hoping to avoid having to move twice, given the disruption, stress and costs involved for her and her sons.

Summary of decision

24. As set out in more detail at paragraphs 7 -9 above, the tribunal was satisfied that the short-assured tenancy agreement between the parties had been validly constituted, and that the Notice to Quit and section 33 notice had been correctly served. It was also satisfied that the short-assured tenancy had reached its end; that tacit relocation was not operating; and that the notices had been validly served on the respondent.

25. Following the hearing, the tribunal went on to consider whether it was reasonable to make an order for recovery of possession. In doing so, it took into account all of the circumstances of the case. The tribunal recognised that both parties found themselves in a very difficult situation. The respondent had been a good tenant who had always paid her rent and complied with the other terms of her tenancy agreement. She and her family was faced with eviction from their home through no fault of their own.
26. At the same time, the applicant had experienced considerable personal and financial difficulties over the past 16 months. If she were unable to release funds through selling the property, she and her family may potentially also face homelessness. The applicant had also made efforts to assist the respondent to find alternative accommodation.
27. The tribunal had considerable sympathy with both parties and recognised that the issues in this case were finely balanced. In weighing up all of the circumstances, the tribunal noted that at the start of the short assured tenancy, given the rules that were in place at that time, both parties would have had the reasonable expectation that the tenancy could have been brought to an end by either party giving eight weeks' notice. In fact, due to the requirements of the 2020 Act, the respondent had been given six months' notice, and as at the date of the hearing it had been nine months since the notice was given. The tribunal also noted that the respondent would not be made homeless were an order to be granted. While it was possible that she and her family may have to live in temporary accommodation for a period, they would at some stage be provided with a council home.
28. Having carefully considered all of the evidence and all of the circumstances of the case as set out above, the tribunal considered that on balance it was reasonable to grant an eviction order. The tribunal therefore determined that an order for recovery of possession should be granted in favour of the applicant.
29. It was clear to the tribunal that the respondent accepted that she would have to leave the property. She wished however to be given as much time as possible in the hope that she would be offered a council house before she had to leave. It was also clear that the applicant was sympathetic to the respondent's situation. The tribunal therefore asked the parties for their views on a possible delay in execution of the order to give the respondent more time. With the agreement of the parties, the tribunal therefore ordered a delay in the execution of the order until 30 September 2021, in terms of rule 16A (d) of the 2017 rules.

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.

S. O

Sarah O'Neill
Legal Member/Chair

20 July 2021
Date