



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/21/1373

Re: Property at Flat 8, 2A Elm Street, Dundee, DD2 2AY (“the Property”)

Parties:

Mrs Anne Hutcheson, 1A Trail Street, Broughty Ferry, Dundee, DD5 3AX (“the Applicant”)

Mr David Anderson, Flat 8, 2A Elm Street, Dundee, DD2 2AY (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Ann Moore (Ordinary Member)

Decision

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

• **Background**

1. This was a case management discussion to consider the application made by the Applicant dated 4th June 2021 for an order for repossession of the Property in terms of Rule 66 of the Tribunal Rules. The CMD took place by teleconference as a result of the current requirement for social distancing.
2. The Applicant is the Landlord in a Short Assured Tenancy with the Respondent who is the tenant. The Applicant has title and interest by virtue of owning the property.
3. The Applicant was not present on the teleconference herself but was represented by Ms Julie Carmichael from Westport Property Ltd. Mr Adam Hutcheson the applicant’s son and a director of Westport Property was also attending as an observer only. The Respondent attended on the call but was not represented.
4. The Applicant had lodged and the Tribunal had sight and considered the following documents:-

- a. Application for repossession dated 4th June 2021
- b. Copy Tenancy Agreement for the Property dated 11th July 2008
- c. Copy AT5 Notice dated 11th July 2008
- d. Notice to Quit dated 23rd September 2020 giving notice to leave by 24th April 2021
- e. S33 Notice dated 23rd September 2020 giving notice to remove by 24th April 2021
- f. Proof of posting dated 23rd September 2020
- g. S11 notice to Dundee Council dated 4th June 2021
- h. Copy e-mail from Thorntons solicitors confirming instructions by Mr Donald Hucheson that they are to act in the sale of the Property.
- i. Written statement from the Applicant confirming she wishes to sell the Property as soon as possible dated 24th June 2021.

The Discussion

5. The Legal Member explained the purpose and order of the proceedings today.
6. The Applicant's representative explained that she was seeking an order for possession today. She advised that the appropriate notices have been served on the Respondent last year, that he had been advised then that the Landlord wished to sell the Property and that the landlord is now very keen to sell as she and her husband are retired.
7. Mr Anderson advised that he had received the notices and noted he had been given 6 months' notice to leave but felt that due to the lockdown over the winter he had been deprived of 3 of those months as time to look for a suitable property as neither the council nor the housing association were allowing viewers for a while. He confirmed that he is on a priority list with the council and they are aware of this discussion today and he was in regular contact with them, but has not yet accepted any offer as he has not found a suitable property yet. He has a call with the council scheduled for after the discussion today.

Findings in Fact

8. The Applicant and Respondent entered into a short assured tenancy of the Property for a period of 6 months from 24th July 2008 to 24th January 2009 continuing on a month to month basis thereafter.
9. The Applicant is the Landlord and served a Form AT5 on the Respondent who is the Tenant prior to the creation of the tenancy.
10. The Tenancy is a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988.
11. The Applicant has served a Notice to quit and S33 notice on the Respondent terminating the contractual tenancy and giving 6 months' notice that they required possession of the Property by 24th April 2021 being a termination date of the tenancy.
12. The Respondent who is the tenant has not vacated the property.
13. The Respondent wishes to be rehoused in social housing and is in regular contact with the council regarding this.

14. A s11 notice in terms of the Homelessness etc. (Scotland) Act 2003 was served on the Local Authority on 4th June 2021
15. The Tribunal finds it reasonable that an order for eviction be granted.

Reasons for Decision

16. The Applicant has entered into a Short Assured Tenancy with the Respondent.
17. S33 of the Act says “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 for Scotland may make an order for possession of the house if it is satisfied-
 - a) That the short assured tenancy has reached its ish
 - b) That tacit relocation is not operating
 - c) That no further contractual tenancy is for the time being in existence and
 - 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.

The period of notice required to be given under S33 (1) (d) above is six months, in accordance with the legislation as amended.

18. The Short Assured tenancy has reached its ish, tacit relocation is not operating and there is no further contractual tenancy in existence, so the Applicant having given adequate notice in terms of S33 above, can and has applied to repossess the Property. However since April 2020 and Section 2 and Schedule 1 of the Coronavirus (Scotland) Act 2020, there has been a change to the law on repossessions and before an order for possession is granted the Tribunal has to be satisfied that it is reasonable to grant the order.
19. The Tribunal considered carefully the submissions from the Applicant and Respondent and the written evidence it had before it. The Tribunal notes the Applicant wishes to sell her property and that a further 5 months has elapsed since this application has been raised. The Respondent has confirmed he received notice of the landlord's intention to sell and notice for him to remove from the property and he has been in contact with the council regarding being rehoused but has not yet been offered a Property that he feels is suitable.
20. The Tribunal is able to make any order at a case management discussion as it can after a Hearing. The Respondent acknowledges the notices have been given. He is unhappy that he feels he has lost 3 months when the council were not showing properties due to the pandemic situation; however the Tribunal notes that the time limits for serving notices were lengthened precisely for the purpose of giving further time to tenants in these circumstances. Given it has now been over a year since the S33 notice was served, given the Landlord wishes to sell her property and the council does have a duty to rehouse or give advice on this to the Respondent then the Tribunal balancing the interests of both parties finds it is reasonable to grant an order for repossession at this CMD and that a hearing is not required.

- **Decision**

An order for eviction was granted.

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: Jan Todd

Date: 30th September 2021