



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 (hereinafter referred to as “the 1988 Act”) for Recovery of Possession of a Short Assured Tenancy

Chamber Ref: FTS/HPC/EV/21/1483

Re: Property at Bus Stop Cottage, 18 Carriden Brae, Bo’Ness, EH51 9SL (“the Property”)

Parties:

Mr Graeme Paul, Mr James Malcolm Paul, Mr John Paul, Stacks Cottage, Bo’Ness, EH51 9SN; The Garden House, Parsley Gardens, Linlithgow, EH49 6PJ; Thorntonhill, Kinross, KY13 0PB (“the Applicant”)

Mr Ronald Christie, Mrs Wilma Christie, Bus Stop Cottage, 18 Carriden Brae, Bo’Ness, EH51 9SL (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Eileen Shand (Ordinary Member)

This Hearing was a Case Management Discussion fixed in terms of Rule 17 of the Procedure Rules and concerned an Application for Recovery of Possession on termination of a Short Assured Tenancy under Section 33 of the Housing (Scotland) Act 1988. The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved. The purpose of the hearing was explained to parties. It was understood a final decision on the Application could also be made. The Hearing took place by teleconference due to the Covid-19 pandemic.

Attendance and Representation

The Applicant was represented by Anne Johnstone, Northwood Central UK Ltd, 9-11 Bank Street, Falkirk, FK1 1NB

The Respondents did not attend the Tribunal. Sheriff Officer service of the Application and notice of the hearing took place on 13th July 2021.

Decision (in absence)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") granted an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988.

Case Management Discussion

The Applicant's representative in regards the non-attendance of the Respondent's said that she wasn't aware they would not attend the Case Management Discussion. She said in the last few months that the Respondents had not paid rent and were not answering communications. However she said that prior to that she had a good working arrangement with them and that they had been seeking alternative accommodation through the Local Authority. The Applicant's representative referred to significant paperwork lodged containing a number of emails confirming the intentions of the Respondents to seek alternative accommodation. The Applicant's representative also particularly referred to email contact with the Local Authority which confirmed that temporary accommodation would be arranged and asking if storage was required.

The Applicant's representative said that the letting agency had offered some private rentals to the Respondents but they preferred to seek local authority housing rather than another private let.

The Applicant's representative set out that the Respondents were both working and had an adult son at home. The Applicant's representative told the Tribunal that the property itself was a rental property of several years duration. It consisted of an old stone small house adjoined to a derelict house which needs renovation. She said this second house is also owned by the Applicants and they are not in a position to renovate it and cannot sell that house separately from the property due to the nature of the property's and their position together.

The Applicant's representative said that the Applicants have deliberately not applied for an order for eviction for a significant period but that they now needed to progress to a sale.

The submission for the Application was that the tenancy had reached its term, the relevant notices and notice period had been given and the Applicants now required to progress to a sale.

Findings in Fact

1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and that to do so would not be contrary to the interests of the parties having regard to the Overriding objective. The Respondents were not present at the hearing but had received Sheriff Officer service.
2. The Tribunal was satisfied that the tenancy was in terms of Section 32(1) of the 1988 Act, a Short Assured Tenancy for not less than 6 months and in relation to which a prescribed notice namely a valid AT5 had been served before creation of the short assured tenancy.

3. In terms of Section 33 of the 1988 Act the Tribunal considered that the Short Assured Tenancy had reached its end and the Notice to Quit contained the correct end date.
4. Further the Tribunal was satisfied that no tacit relocation was operating, no further contractual tenancy was in existence and a valid Notice to Quit had been served on the Respondent terminating the tenancy with the necessary notice given to the Respondent.
5. Proof of a correct method of service of the Notice to Quit had been lodged and the necessary Section 11 notice sent to the relevant local authority.
6. In balancing the circumstances of both parties the Tribunal noted that the Respondents were working, there were no vulnerabilities and that they had been engaged with the local authority to seek alternative accommodation. The Tribunal also noted that the Applicants were unable to sell the adjoining property separately and it was derelict and they sought to sell both properties together. The relevant notice period and engagement with the letting agent had been evidenced. The Tribunal found that it was reasonable to grant the Order sought.
7. Accordingly in terms of Section 33 of the 1988 Act the Tribunal granted an order against the Respondent for possession of the Property.

Reasons for Decision

The Tribunal considered that the Application was full and that the Applicant's representative had sought to keep the Tribunal up to date on the progress of the Respondent's seeking alternative accommodation. The Applicants had complied with the relevant statutory provisions and the question for the Tribunal was whether the Order sought was reasonable. The Tribunal found in particular the evidence of the Applicant's representative to be credible and reliable and relied upon that. She was honest and straightforward and set out in detail the position of both parties. Accordingly in the circumstances the Tribunal considered it was reasonable to grant 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.

Karen Kirk
Legal Member/Chair

13 August 2021
Date