



**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/21/1809

Re: Property at 10 Winnipeg Drive, East Kilbride, G75 8JB (“the Property”)

Parties:

Fiona Frew, Robert Frew, Tara Gilmourton, Strathaven, ML10 6QF (“the Applicant”)

Lyndsay Erskine, 10 Winnipeg drive, East Kilbride, G75 8JB (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Mary Lyden (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

Heather Fraser, The Property Store, 6 Hunter street, East Kilbride, G74 4LZ attended to represent the Applicants, who were not present.

The Respondent attended personally and was unrepresented.

Decision

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. The Tribunal superseded extract for a period of two months.

Case Management Discussion Summary

For the Applicant

The Applicant’s representative set out that she sought an Order for Eviction in terms of Section 33 of the Housing (Scotland) Act 1988. She referred to the Notice to Quit which had been served by Sheriff Officer on 15th January 2021. She made submissions in terms of the Act. She later set out that Robert Frew one of the Applicant’s suffered from ill health and his circumstances have changed considerably given same. She said that he was now seeking to retire and has 2 properties he is now selling including this property. The Applicant’s representative said that the Local Authority had been seeking to work with the Respondent in terms of alternative housing.

For the Respondent

The Respondent confirmed she had received notice from sheriff officers in January when she had been in bed unwell. This was the first she had heard about the proposed eviction. The Respondent set out she has been unable to work for 3 years due to having lost her father, brother and mother in this period. The Respondent said she has an 11 year old son residing with her in a local school and her 21 year old daughter. She said she had been hoping the Applicant would reconsider. She had also been trying to find accommodation but had been unable to.

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. Both parties were represented or present and were able to give the Tribunal all the necessary information.**
- 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. The Respondent accepted she had received service and did not dispute any of the relevant statutory provisions.

5. Proof of a correct method of service of the Notice to Quit namely Sheriff Officer service on 15th January 2021 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 Respondent was unable to work due to her health and connected to 3 close family bereavements in the last 3 years. She also had an 11 year residing with her. She had been so far unable to seek alternative accommodation but there had been contact with the Local Authority. The Tribunal also noted that the Applicants now needed to sell the property due to ill health and a connected change in financial circumstances. The Tribunal found that it was reasonable to grant the Order sought. However the Tribunal considered in terms of the overriding objective of the Tribunal that in fairness it was appropriate to supersede extract in balancing the rights of both parties for a period of 2 months to allow the Respondent to find alternative accommodation and take steps given her health, young son and the current pandemic circumstances.
7. Accordingly in terms of Section 33 of the 1988 Act the Tribunal granted an order against the Respondent for possession of the Property and superseded extract for 2 months.

Reasons for Decision

The Tribunal considered that the Applicant 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 for both parties to be credible and reliable. However in balancing 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.

K. K

Legal Member/Chair

15 September 2021

Date