



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 Housing (Scotland) Act 1988 (“the 1988 Act”)

Chamber Ref: FTS/HPC/EV/21/2100

Re: Property at The Cottage, Craiglomond, Duncrievie Road, Perth, PH2 9PA (“the Property”)

Parties:

Ms Nicola Moloney, c/o Aberdein Considine, 5-9 Bon Accord Crescent, Aberdeen, AB11 6DN (“the Applicant”)

Mr Dominik Jelinek, Ms Eliska Finsterle, The Cottage, Craiglomond, Duncrievie Road, Perth, PH2 9PA (“the Respondents”)

Tribunal Members:

**Josephine Bonnar (Legal Member)
Jane Heppenstall (Ordinary Member)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondents in favour of the Applicant.

Background

1. By application dated 31 August 2021, the Applicant seeks an order for possession of the property in terms of Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”) A tenancy agreement, AT5 notice, copy Notices to Quit, Section 33 Notices and Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 were lodged in support of the application.
2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer. Both parties were notified that a Case Management Discussion (“CMD”) would take place on 26 October 2021 at 2pm and that they were required to participate. Both were provided with a telephone number and passcode. Prior to the CMD the Tribunal was contacted by the

Respondents who advised that they had been staying in the Czech Republic for some time and had only recently become aware of the application and CMD. They requested a postponement of the CMD as they were due travel back to Scotland on or about 26 October 2021. The Tribunal noted that the Sheriff Officers report states that a neighbour had indicated that the Respondents were in the Czech Republic. The postponement request was granted and parties were notified that a CMD would take place on 1 December 2021 at 10am by telephone conference call. Prior to the CMD the Respondents lodged written submissions.

3. The CMD took place by telephone conference call on 1 December 2021 at 2pm. The Applicant was represented by Mr Ventisei, solicitor. The Respondents participated. A Czech interpreter also participated.

Case Management Discussion

4. The Respondents advised the Tribunal that they are still residing in the Czech Republic but intend to return to the property soon. They have continued to pay rent for the property, and it is their intention to return. When they do, they intend to start looking for a property to buy. Their belongings are still in the property. The Tribunal asked the Respondents to confirm that they had access to a copy of the application paperwork. They were unable to locate this. The Tribunal adjourned the CMD for a short period. It was established that a copy of the application had been sent to them by email on 11 October 2021. A further copy was sent by email before the CMD resumed. In response to questions from the Tribunal, the Respondents confirmed that the tenancy agreement and AT5 notice lodged by the Applicant were the documents signed by them at the start of the tenancy.
5. The Tribunal noted that the Applicant had not lodged evidence of service of the Notices to Quit and section 33 Notices on the Respondents. Mr Ventisei advised that the notices had been sent by recorded delivery post on 5 May 2020. In response to questions from the Tribunal, both Respondents confirmed that these notices had been received in May 2020. Mr Ventisei advised that there had been a delay between the expiry of the notice period and the application being submitted as the Applicant had wanted to give the Respondents some additional time to return to Scotland and find alternative accommodation. The Respondents acknowledged that the Applicant had notified them that she would give them some extra time.
6. The Tribunal asked both parties to address it on the issue of reasonableness
 - (a) Mr Ventisei advised the Tribunal that the notices had been served in May 2020. The Applicant decided to give the Respondents some latitude because they had gone to the Czech Republic and had not been able to return. However, although they had notified both the Tribunal and the Applicant that they intended to return, they have not yet done so. The property has been unoccupied since the summer of 2020. The property has fallen into disrepair

due to this and there has been a problem with the CO alarm going off sporadically. Although sympathetic to the Respondents situation, the Applicant feels that they have made the situation worse by making false promises about their return. There have been several attempts to contact them to resolve matters, without success. No satisfactory explanation has been provided for their continued residence elsewhere. The Applicant's mother, who is elderly, is due to move into the property when it becomes vacant and has been waiting for a year and a half to do so. In response to questions from the Tribunal, Mr Ventisei confirmed that the rent is being paid and that it would appear that the Applicant has had some access to the property, as she has taken photographs of its current condition.

- (b) The Respondents advised that they returned to the Czech Republic in September 2020, via the consulate in Manchester, as they required to get a passport and other documents for their son who is now 2 years of age. They expected to return very quickly but were unable to do so because of increased COVID 19 restrictions which were imposed at the end of 2020. By the time travel restrictions were lifted, the Second Respondent was expecting their third child who was born in early June 2021. The baby was unwell with respiratory problems following the birth. It was not safe to travel with her for the first few months. More recently, their son has been in hospital with a kidney infection. He is still on antibiotics, and they cannot travel until he is well again. They would like to return before Christmas but don't know if this is possible. Since their return to the Czech Republic, they have been paying rent for the property and their current accommodation. In response to questions from the Tribunal the Respondents advised that they intend to move back to the property, put it back to its previous condition and start to look for a place to buy. They cannot purchase a property while they are not residing in the country. They have considered renting but are concerned that they will not be able to get a good tenancy reference because of the application to the Tribunal. As they did not expect to be away so long, they did not arrange for anyone to keep an eye on the property. On their return they intend to look for a new property.

Findings in Fact

7. The Applicant is the owner and landlord of the property.
8. The Respondents are the tenants of the property in terms of a short assured tenancy agreement dated 24 November 2015.
9. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondents on 5 May 2020.
10. The Respondents have resided in the Czech Republic with their three children since September 2020. They intend to return to the property but are unsure when this will be.
11. The property has fallen into disrepair during the Respondents absence.

12. The Respondents have continued to pay rent throughout their absence from the property.

Reasons for Decision

13. The application was submitted with a short assured tenancy agreement and AT5 Notice. The term of the tenancy is 24 November 2015 until 25 May 2016 with a provision that it continues on a month to month basis thereafter. The AT5 Notice was signed and dated by the Respondent on 24 November 2015 at 2pm. The tenancy agreement was signed and dated by the respondents on 24 November 2015 at 2.08 pm.
14. Section 32 of the 1988 Act states “(1) A short assured tenancy is an assured tenancy - (a) which is for a term of not less than 6 months; and (b) in respect of which a notice is served as mentioned in subsection (2) below. (2) The notice referred to in subsection (1)(b) above is on which – (a) is in such form as may be prescribed; (b) is served before the creation of the short assured tenancy; (c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under the tenancy; and (d) states that the assured tenancy to which it relates is to be a short assured tenancy.”
15. The Tribunal is satisfied that the tenancy agreement between the parties was for an initial term of 6 months and therefore meets the requirements of Section 32(1) of the 1988 Act. The Tribunal is also satisfied that AT5 Notice was given to the Respondents prior to the creation of the tenancy. In the circumstances, the Tribunal determines that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act.
16. From the documents submitted with the application, and the information provided at the CMD by the Applicant’s representative and the Respondents, the Tribunal is satisfied that the Applicant’s agent sent Notices to Quit and Section 33 Notices to the Respondents on 5 May 2020, by recorded delivery post. The Respondents confirmed that these notices were received by them. The Notices to Quit calls upon the Respondents to vacate the property on 25 November 2020, being an ish date. They contains the information prescribed by the Assured tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and comply with the terms of Section 112 of the Rent (Scotland) Act 1984. The Tribunal is satisfied that the Notices to Quit are valid and that the tenancy contract has been terminated. The Tribunal also notes that the Applicants have provided a copy of the Section 11 Notice sent to the Local Authority and have therefore complied with Section 19A of the 1988 Act.
17. Section 33 of the 1988 Act, as amended by the Coronavirus (Scotland) Act 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; (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” Subsection 2 states “The period of notice to be given under subsection (1)(d) above shall be – (1) 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, six months”. The Tribunal is satisfied that the tenancy has reached its finish and, as the Applicant served a valid Notice to Quit, that tacit relocation is not operating. A valid notice in terms of section 33(d) has also been served on the Respondents, giving at least six months’ notice that the Applicant requires possession of the property.

18. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession, in terms of Section 33(e) of the 1988 Act.
19. From the Respondent’s written submissions, the Tribunal notes that the property is no longer suitable for the Respondents and their family as it is too small. They intend to find alternative accommodation as soon as they can. The first Respondent is in employment with a UK company, and they have the means to obtain other accommodation. The Respondents have three young children. They have also maintained the rent at the property throughout their absence. During the CMD the Respondents also explained that they have been prevented from returning to the UK because of COVID restrictions, the Second Respondent’s pregnancy and health issues affecting two of their children. They were unable to provide the Tribunal with a definite return date but aim to return as soon as they are able.
20. The Applicant’s representative explained that the Applicant had chosen not to submit the application as soon as she was able to do so because of the Respondent’s difficulties but that a significant period has now passed. The Respondents have failed to return, and the condition of the property is deteriorating. This appears to be accepted by the Respondents who spoke of re-instating the property to its previous condition on their return. The Applicant intends to move her mother into the property when it becomes vacant. The Applicant concedes that the rent is still being paid.
21. The Tribunal is satisfied that the Respondents absence from the property is partly due to pandemic restrictions and health issues. However, they have been absent for 15 months during which time no arrangements have been made to check on or maintain the property. Currently, the Respondents do not have any firm travel plans and were unable to tell the Tribunal when they expect to be back. In the meantime, the condition of the property is deteriorating and will be at risk of burst pipes and other damage as the winter months progress. The Tribunal also notes that the Respondents do not intend to remain at the property when they return. They simply intend to use it as a base while looking for another property. It is not clear why this is required. There does not appear to be any reason why they cannot source alternative rented accommodation from their current location. Their fears about adverse tenancy references do not appear to be well founded, since they have paid their rent throughout the tenancy. While it might be more convenient for them to have a base in Scotland, it does not seem reasonable that the Applicant should have to wait indefinitely

for them to return, begin their search and find new accommodation. The Tribunal also notes that an Order for possession is not issued by the Tribunal until the appeal period has passed. The Respondents will therefore have a number of weeks before any order granted by the Tribunal can be enforced.

22. The Tribunal determines that the Applicant has complied with the requirements of the 1988 Act and is satisfied that it is reasonable to grant an order for possession of the property. The Tribunal is not satisfied that it would be appropriate to order a delay in execution of the order in terms of Rule 16A of the Tribunal Procedure Rules.

Decision

23. The Tribunal determines that an order for possession of the property should be granted against the Respondents.

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.

Josephine Bonnar, Legal Member

5 December 2021