



**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/21/2782

Re: Property at 15 Finlaystone Sreet, Coatbridge, ML5 1NA (“the Property”)

Parties:

Mrs Eileen McAllister, 14 Cross Hayes, Malmesbury, Wiltshire, SN16 9BG (“the Applicant”)

Ms Helen Docherty, 15 Finlaystone Sreet, Coatbridge, ML5 1NA (“the Respondent”)

Tribunal Members:

Petra Hennig-McFtridge (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery of possession be granted.

A Background:

[1] The application for an order for Possession on Termination of a Short Assured Tenancy in terms of S 33 of The Housing (Scotland) Act 1988 was made on 9 November 2021.

[2] The following documents were lodged by the Applicant prior to the date of the Case Management Discussion (CMD):

1. Copy Tenancy Agreement commencing 1.7.2009
2. AT5 document
3. Notice to Quit dated 5.5. 2021 with date of removal of 1.7. 2021
4. S 33 Notice dated 5.5.2021 with date of vacating premises of 8.11.2021
5. Recorded delivery slip and track and trace confirmation of service on 6.5.2021
6. S 11 Notice to the Local Authority and email confirming sending of same on 9.11.2021

7. Paper apart

The documents are referred to for their terms and held to be incorporated herein.

[3] A Case Management Discussion (CMD) had been fixed for 20.1.2022 and the notification served on the Respondent on 15.12.2021 by Sheriff Officers

B The Case Management Discussion:

[4] The CMD took place on 20.1.2022. Ms Morrison attended on behalf of the Applicant. The Respondent attended with her husband as supporter. The CMD took place by teleconference.

[5] The Respondent confirmed receipt of all the documents as stated in the application. She lives at the property with her husband and her two children aged 21 and 17 respectively. There are no specific access or health issues and the Respondent agreed that the application was a reasonable step to take for the Applicant. She stated that there was no opposition to the order being granted and there were no specific matters the Respondent wished to raise regarding reasonableness. The Respondent further stated that if an order was granted this would enable her family to then obtain some assistance from the Council.

[6] Ms Morrison referred to the application and moved for the order. She confirmed all legal requirements for the S 33 application had been met and the Respondent had not moved out. The Respondent was not putting forward any arguments why it would not be reasonable to grant the order. The tenant had not moved out once the notice period had expired. The Applicant requires to sell the property to finance the tuition fees and accommodation for her daughter. In all the circumstances it would be reasonable to grant the order.

C Findings in Fact:

1. The Applicant and the Respondent entered into a Short Assured Tenancy on 1.7.2009 for an initial period to 1.1.2010 and continued thereafter 6 monthly by tacit relocation.
2. Document AT5 was receipted and signed by the Respondent on 1.7.2009
3. No specific notice period is stated clause 33 of the tenancy agreement.
4. Notice to Quit dated 5.5.2021 was served on the Respondent by recorded delivery on 6.5.2021 advising of the termination of the tenancy on the termination date of 1.7.2021.
5. Tacit relocation is not operating due to the Notice to Quit.
6. Notice in terms of S 33 (1) d of The Housing (Scotland) Act 1988 was served on the Respondent by recorded delivery on 6.5.2021 advising of the intention to repossess the premises on 8.11. 2021.
7. Notice to the Local Authority was given in terms of S 11 of the Homelessness Etc (Scotland) Act 2003.
8. The Respondent continues to occupy the property at the date of the CMD on 20 .1.2022.
9. The Respondent lives at the property with her two children aged 17 and 21 and her husband.

10. There are no specific health or access issues for the Respondent and her family.
11. The Applicant requires to sell the property to finance her daughter's university education.
12. The Applicant is reasonably entitled to use the process under S 33 to gain repossession of his property in these circumstances.

D Reasons for the Decision:

[7] The Tribunal considered that the material facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,
a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The documents lodged are referred to for their terms and held to be incorporated herein.

[8] The Tribunal concluded it was not necessary to fix a hearing as the Respondent did not oppose the order being granted and the documents lodged evidenced sufficiently the matters required to determine whether the legal tests for an order in

terms of S 33 of the Housing (Scotland) Act 1988 are met. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the information given at the CMD by Ms Morrison and the Respondent.

[9] The legal test for an eviction order is set out in S 33 of the Housing (Scotland) Act 1988 as amended by the Coronavirus (Scotland) Act 2020. The Coronavirus (Scotland) Act 2020 applies to this case as the Notices were served after 7 April 2020 when the Act came into force.

S 33 states:

33 Recovery of possession on termination of a short assured tenancy.

(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; and

(c) that no further contractual tenancy (whether a short assured tenancy or not) 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.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) 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.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.

In short, in terms of S 33 (1) of the Housing (Scotland) Act 1988 an order for possession of the house under a Short Assured Tenancy shall be made if the Tribunal is satisfied that:

1. The short assured tenancy has reached its ish
2. That tacit relocation is not operating

3. That there is no further contractual tenancy in existence
4. That the landlord has given to the tenant notice that he requires possession of the house.
5. That it is reasonable in all the circumstances to grant the order.

[10] The facts of the case are not in dispute. Fair notice of all aspects of the Applicant's case had been provided to the Respondent. The Respondent did not oppose the granting of the order. The dates and documents served as stated above were not in dispute.

The Tribunal was satisfied on the basis of the documents lodged that that all requirements for recovery of possession in terms of the Housing Scotland Act 1988 had been complied with.

[11] The tenancy document and AT5 document show that the tenancy is a Short Assured Tenancy which has reached its ish. The landlord had served a notice to quit with the required notice period for the ish on 29 August 2021 and thus tacit relocation does not operate. The landlord had served on the Respondents a notice in terms of S 33 (1) d of the Housing (Scotland) Act 1988 with the required 6 months notice period. The Notice to Quit ended the contractual tenancy at an ish date and thus the tenancy became a statutory assured tenancy in terms of S 16 of the Housing (Scotland) Act 1988.

[12] Even if the formal tests of S 33 (1) of the Housing (Scotland) Act 1988 are met, the Tribunal still has to consider whether it is reasonable in all the circumstances to grant the eviction order. In this case the Tribunal notes that the reason given by the Respondent for not moving was that in order to be re-housed the process has to be followed through to the order. There was no opposition to the application and the Respondent did not put forward any reasons why it would not be reasonable to grant the order. She had notice of the circumstances since May 2021. The Applicant has a legitimate need to sell the property.

[13] The Tribunal thus considered that on balance and taking into account all the information available it is reasonable to grant the eviction order.

Decision:

The Tribunal grants the order for recovery of possession.

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.


Petra Hennig McFatridge
Legal Member/Chair

20 January 2022
Date