



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/21/3065

Re: Property at 38 Stobbs Crescent, Kilwinning, KA13 6JE (“the Property”)

Parties:

Mr Brian Lyttle, 204 Rathkeel Road, Ballymena, Northern Ireland, BT42 4HT (“the Applicant”)

Miss Stephanie Inglis, 38 Stobbs Crescent, Kilwinning, KA13 6JE (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member)

Mary Lyden (Ordinary Member)

Decision (In absence of the Respondent)

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

Background

- 1. The Applicant lodged an application seeking 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 Notice to Quit, Section 33 Notice 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 on 13 January 2022. Both parties were notified that a Case Management Discussion (“CMD”) would take place on 18 February**

2022 at 10 am and that they were required to participate. Both were provided with a telephone number and passcode. Prior to the CMD, on 17 February 2022, the Respondent telephoned and emailed the Tribunal administration to ask if she had to take part in the conference call as she had work commitments. A response was issued directing the Respondent to the letter which was issued to her with the copy of the application and the Chamber website, which provides information about the Tribunal process.

3. The CMD took place by telephone conference call on 18 February 2022. The Applicant was represented by Ms McDiarmid, letting agent. The Respondent did not participate and was not represented. She did not lodge any written representations. The Tribunal noted that the Respondent was aware of the CMD and had not requested a postponement. The letter issued to her with the application stated that the Tribunal can make a final decision on an application at a CMD. The Tribunal determined that the CMD would proceed in the Respondent's absence

Case Management Discussion

4. Ms McDiarmid advised the Tribunal that she has been in regular contact with the Respondent since the Notice to Quit and Section 33 notice were served. She had explained to the Respondent that the property is to be sold. The Respondent has been looking for alternative accommodation in the area but there are few private lets available. She has applied to the Local Authority and hopes to be offered something by them if the order for possession is granted. In response to questions from the Tribunal, Ms McDiarmid stated that the Respondent has been the tenant of the property for several years. She resides at the property with 2 children, thought to be of school age. The property is a three-bedroom mid-terraced house. There have been rent arrears in the past, but these were addressed. The Respondent works part time and is in receipt of Universal Credit. Most of her rent is covered by Universal Credit housing costs. There are no other tenancy related issues. Ms McDiarmid advised the Tribunal that she is not aware of any member of the household suffering from a health issue or disability. She advised that the Applicant is a farmer who resides in Ireland. He purchased the property before the stock market crash in 2008. The property has been in negative equity since that time. He has decided to sell now because house prices have recently improved, although he still expects to make a loss. In response to a question about the possibility of the Tribunal ordering a delay in execution of the order for possession, Ms McDiarmid advised that she thought that the Applicant would have no objection to a delay of a few weeks to give the Respondent time to source alternative accommodation.

Findings in Fact

5. The Applicant is the owner and landlord of the property.

6. The Respondent is the tenant of the property in terms of a short assured tenancy agreement dated 6 May 2016.
7. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondent on 2 June 2021.
8. The Respondent resides at the property with two children.
9. The Applicant intends to sell the let property.

Reasons for Decision

10. The application was submitted with a short assured tenancy agreement and AT5 Notice. The term of the tenancy 6 May 2016 until 6 November 2016 with a provision that it continues on a month to month basis thereafter. The AT5 Notice is signed and dated by the Respondent, on the same date as the tenancy agreement.
11. 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.”
12. 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 Respondent 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.
13. From the documents submitted with the application, and the information provided at the CMD by the Applicant’s representative, the Tribunal is satisfied that the Applicant’s letting agent sent the Notice to Quit and Section 33 Notice to the Respondent by recorded delivery post. It was delivered on 2 June 2021. The Notice to Quit calls upon the Respondent to vacate the property on 6 December 2021, being an ish date. It contains the information prescribed by the Assured tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and complies with the terms of Section 112 of the Rent (Scotland) Act 1984. The Tribunal is satisfied that the Notice to Quit is valid and that the tenancy contract has been terminated. The Tribunal also notes that the Applicant has provided a copy of the Section 11 Notice sent to the Local Authority and have therefore complied with Section 19A of the 1988 Act.

14. 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; (c) 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 – (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”. The Tribunal is satisfied that the tenancy has reached its finish and, as the Applicants have 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 Respondent, giving at least six months’ notice that the Applicant requires possession of the property.
15. 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. As the Respondent did not participate in the CMD, or send written representations, the information available to the Tribunal about her circumstances was limited and the Tribunal is not aware whether the application is opposed. The Applicant’s representative was able to confirm that the Respondent has two dependent children at the property, thought to be of school age. She works part time and is in receipt of universal credit. Although there have been rent arrears in the past, the rent account is not currently in arrears and the Respondent has otherwise been a good tenant. She has been trying to find alternative accommodation and hopes to be housed by the Local Authority.
16. The Tribunal notes that the Applicant purchased the property as an investment when house prices were high. The property has been in negative equity for a number of years and the Applicant wants to sell it now because the market is better, and this should restrict the loss he will incur.
17. As the Respondent has not indicated that the application is opposed or provided any information about her circumstances, and as the Tribunal has been advised that the Applicant wishes to sell the property, the Tribunal is satisfied that it would be reasonable to grant the order for possession.
18. Rule 16A(d) of the Tribunal Procedure Rules states that the Tribunal can order a delay in execution of an order at any time before it is executed. As the Respondent has not yet obtained alternative accommodation and has two children residing with her, the Tribunal is satisfied that execution of the order for possession should be delayed until 13 May 2022.
19. The Tribunal determines that the Applicant has complied with the requirements of the 1988 Act and that it is reasonable to grant an order for possession of the property.

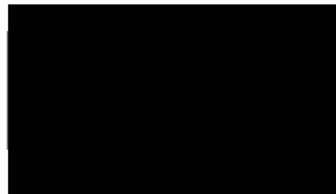
Decision

20. The Tribunal determines that an order for possession of the property should be granted against the Respondent. The Tribunal also determines that execution of the order should be delayed until 13 May 2022

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:



Date: 18 February 2022