



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/22/1024

Re: Property at 5 Finella Terrace, Dundee, DD4 9PX (“the Property”)

Parties:

Mr Graham Tennent, Mrs Mairead Tennent, 48 Finella Place, Dundee, DD4 9HL (“the Applicant”)

Ms Mary Jane McLeod, 5 Finella Terrace, Dundee, DD4 9PX (“the Respondent”)

Tribunal Members:

Ruth O’Hare (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for repossession against the Respondent in favour of the Applicants

Background

- 1 By application to the Tribunal dated 6 April 2022 the Applicants sought an eviction order against the Respondent in respect of the Property under section 33 of the Housing (Scotland) Act 1988. In support of the application the Applicant provided the following documentation:-
 - (i) Short Assured Tenancy Agreement between the parties dated 4 October 2011 together with Form AT5;
 - (ii) Notice to Quit dated 14 September 2021 and Notice under section 33 of the Housing (Scotland) Act 1988 dated 14 September 2021 together with proof of service by recorded delivery; and
 - (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Dundee City Council together with proof of service.

- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for the 5 July 2022 to take place by teleconference due to the restrictions imposed by the Covid-19 pandemic. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers.
- 3 By letter dated 23rd May 2022 the Applicants submitted a letter of support from the Respondent. By email dated 1st June 2022 the Respondent's representative Dundee Law Centre submitted written representations on behalf of the Respondent. The said documents were crossed over to the respective parties.

Case Management Discussions

- 4 The Case Management Discussion took place by teleconference on 5 July 2022. The Applicants were both present. The Respondent was in attendance and represented by Ms Joyce Horsman of Dundee Law Centre.
- 5 The Legal Member explained the purpose of the Case Management Discussion. The Tribunal then proceeded to hear from the parties.
- 6 Mr Tennent confirmed that he would address the Tribunal on behalf of the Applicants, which Mrs Tennent agreed to. Mr Tennent confirmed that the Applicants sought repossession of the property. He had given up work six years ago for medical reasons and the Applicants were therefore in a position where they had to sell the property for financial reasons. Mr Tennent advised that the decision had not been taken lightly. They had not had any problems with the Respondent as a tenant. She had been advised approximately two years prior that they required to sell the property. Mr Tennent confirmed that the Respondent had been given time to source alternative accommodation, they did not want to put her out on the street. The Applicants would be more than willing to assist the Respondent in obtaining alternative accommodation and had received applications from different agents in this regard. They had provided the references asked for but no offers of accommodation for Ms McLeod had ensued. Mr Tennent explained about the background to the tenancy. The property had been owned by his daughter and they had purchased it as a short term let. However it now required a lot of work and they were unable to undertake what was required. Mr Tennent confirmed that it would be their intention to put the property on the market as soon as possible in the event of an order being granted.
- 7 In response to questions from the Tribunal Mr Tennent advised that the Applicants could not afford to carry out works in the house and the Respondent could not afford to live there because of her changed circumstances in being unable to work, and because of rising fuel costs. He confirmed that this was the

only property let by the Applicants. They had not set out to be landlords, they had just happened to get into that situation. The intention was always to let the property on a short term basis, which the Respondent was aware of. They knew the property needed a lot of work, however it was their intention to let it for a few years to recoup the money spent at the start. Mr Tennent confirmed there was no mortgage on the property. However the Applicants needed to free up the money invested in the property in order to address their financial situation.

- 8 Ms Horseman addressed the Tribunal on behalf of the Respondent. She confirmed that the Respondent's position was set out in her written representations. There was no active objection to the granting of the order. The relationship between the parties had always been good and there was no animosity. Ms Horseman confirmed that the Respondent had made an application to the local authority for housing. She had tried to obtain a private tenancy but had been outpriced. Ms Horseman confirmed that the Respondent was no longer able to work due to health difficulties following a recent change in circumstances. She resided in the property with her three children. She was therefore finding it difficult to obtain another private tenancy. Ms Horseman advised that she was assisting the Respondent with her application for local authority housing and trying to secure additional health points to enhance her prospects. Ms Horseman pointed out that the Respondent's health issues were triggered by stress therefore she did not want to prolong the Tribunal proceedings. There was therefore no objection to the granting of the order.
- 9 The Tribunal sought further information on the Respondent's application for local authority housing. Mr Horseman confirmed that the last update had been on 19th May 2022. The Respondent's application had been assessed and she had been placed in a general needs group. She was flexible about the areas in which she would accept a tenancy. Whilst Ms Horseman was seeking to increase the Respondent's points, citing her ongoing health issues, she did not think this would have any significant impact on her prospects. The Respondent had also sought housing with registered social landlords, however turnover was low and the type of housing the Respondent was seeking, namely a three or four bedroom, was in short supply. Ms Horseman advised that it was likely the Respondent would have to move into temporary accommodation and the granting of the order would assist with this. In response to questions from the Tribunal, Ms Horseman advised that the Respondent would be looking to move from the property, regardless of the ongoing proceedings, as it was no longer affordable due to increasing utility costs and upgrading works that were required.
- 10 The parties concluded their submissions by confirming again that they continued to have a positive relationship. Mr Tennent wished the Respondent all the best and confirmed that he would try and help her as much as he could. The Respondent wanted it noted on record that Mr Tennent was a lovely man and she appreciated the position the Applicants were in.

Relevant Legislation

11 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Housing (Scotland) Act 1988, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

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)

(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.

Findings in Fact and Law

- 12 The Applicants entered into a Short Assured Tenancy Agreement with the Respondent which commenced on 4 October 2011.
- 13 The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 14 On 14 September 2021 the Applicants delivered a Notice by recorded delivery under section 33 of the Housing (Scotland) Act stating that the Applicant required the property back by 5 April 2022.
- 15 On 14 September 2021 the Applicants delivered a Notice to Quit to the Respondent by recorded delivery which sought to terminate the tenancy on 5 April 2022. The Notice to Quit was in the prescribed form.
- 16 The Respondent does not object to the granting of the eviction order.
- 17 The Respondent has applied for accommodation with the local authority.
- 18 The Applicants require to sell the property to release funds in order to improve their financial situation. The property is the sole property let by the Applicants.
- 19 The Applicants have sought to assist the Respondent in obtaining alternative accommodation.
- 20 The provisions of section 33 of the Housing (Scotland) Act 1988 have been met.
- 21 It is reasonable to make the order sought by the Applicants.

Reasons for Decision

- 22 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. On the basis that the substantive facts of the matter were agreed between the parties the Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved.
- 23 The Tribunal was satisfied that the Respondent had been served with a valid Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988. The issue for the Tribunal to determine therefore was whether it was reasonable in all the circumstances to grant an eviction order.
- 24 The Respondent had intimated that she did not object to the granting of the order. It was clear that the relationship between the parties was a positive one, and Mr Tennent had offered at various points during his submission to assist the Respondent in obtaining alternative accommodation. Whilst the Tribunal

noted the Respondent's personal circumstances, including the dependents residing with her and her ongoing health issues, ultimately she had intimated that the tenancy was no longer affordable and she was actively seeking accommodation elsewhere. Taking that into account, alongside the reasons outlined by the Applicants as justification for selling the property, the Tribunal was satisfied that balancing the particular facts and circumstances of this case it would be reasonable to grant an eviction order.

25 The decision of the Tribunal was unanimous.

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.

Ruth O'Hare

5 July 2022

Legal Member/Chair

Date