

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/22/2037

Re: Property at 16E Links Avenue, Musselburgh, EH21 6JY (“the Property”)

Parties:

Mrs Hannah D'Mellow, Mr Kenton D'Mellow, 27 Liberton Brae, Edinburgh, EH21 6JY (“the Applicants”)

Mrs Aileen Davidson, 16E Links Avenue, Musselburgh, EH21 6JY (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants were entitled to an order for possession of the property and the removal of the Respondent from the property.

Background

1. By application dated 22 June 2022 the Applicants' representatives, Marchside Property, Edinburgh, applied to the Tribunal for an order for possession of the property and the removal of the Respondent from the property under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Applicants' representatives submitted a copy of the tenancy agreement, Form AT5, Prior Grounds Notice, Notice to Quit and Section 33 Notice with Execution of Service together with correspondence from the Applicants explaining their reasons for requiring possession all in support of the application.
2. By Notice of Acceptance dated 19 July 2022 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 11 August 2022.

The Case Management discussion

4. A CMD was held by teleconference on 28 September 2022. One of the Applicants, Mrs Hannah D'Mellow was in attendance and the Applicants were represented by Mr Sam Griffiths from Marchside Property. The Respondent did not attend and was not represented. The Tribunal being satisfied that proper intimation of the CMD had been given to the Respondent determined to proceed in her absence.
5. Mr Griffiths confirmed to the Tribunal that the parties had entered into a Short Assured Tenancy that had commenced on 22 December 2016 and endured until 23 June 2017 and from month to month thereafter at a rent of £725.00 per calendar month. Mr Griffiths confirmed the Respondent had been given a Form AT5 prior to the commencement of the tenancy.
6. Mr Griffiths said that the Respondent had been served with a Notice to Quit and Section 33 Notice by Sheriff Officers on 19 October 2021 and the Respondent had been given six months' notice. Mr Griffiths also confirmed that he had sent a Section 11 Notice to Lothian Council on 24 June 2022.
7. Mr Griffiths went on to say that he had explained to the Respondent in April 2021 that it was the landlords' intention to sell the property but because the Respondent had some difficult circumstances at that time the Applicants had agreed to delay serving the Notice to Quit for six months. Mr Griffiths went on to say that the Respondent did have somewhere to stay and was intending moving in with her daughter. It had been thought that she would move before the CMD but he now thought she intended to move in October. Mr Griffiths also said that the Respondent had accrued a small amount of rent arrears amounting to about one month's rent. He thought the Respondent lived alone and was aged 65 and may be retiring.
8. Mrs D'Mellow confirmed that she and her husband had separated but were continuing to live in the family home and that this was quite difficult. Obtaining possession of the property would allow it and the family home to be sold and both she and her husband would each be able to buy a property for themselves and for their two children aged 10 and 12 to move between.
9. Mr Griffiths submitted it was reasonable for the Tribunal to grant the order.

Findings in Fact

10. The parties entered into a Short Assured Tenancy that commenced on 22 December 2016 at a rent of £725.00 per calendar month and endured until 23 June 2017 and from month to month thereafter.

11. The Respondent was served with a Notice to Quit and Section 33 Notice by Sheriff Officers on 19 October 2021.
12. Intimation of the proceedings was sent to Lothian Council by way of a Section 11 Notice on 24 June 2022.
13. The Applicants delayed sending a Notice to Quit for six months because of concerns for the Respondent's circumstances.
14. The Respondent is aged about 65 and lives alone in the property.
15. The Respondent has accrued rent arrears amounting to about one month's rent.
16. The Respondent has indicated to the Applicant's representatives that she intends to vacate the property to live with her daughter in October 2022.
17. The Applicants have separated but continue to live in the family home and intend to sell the property and the family home and each buy another property for themselves and their children.

Reasons for Decision

18. The Tribunal was satisfied from the written representations, documents and oral submissions that the parties entered into a Short Assured Tenancy that commenced on 22 December 2016 at a rent of £725.00 per calendar month and endured until 23 June 2017 and from month to month thereafter.
19. The Tribunal was also satisfied that procedurally the requirements in terms of Section 33 of the 1988 Act had been met in that a valid Notice to Quit and Section 33 Notice had been served on the Respondent by Sheriff Officers on 19 October 2022. However, the Tribunal also had to be satisfied that it was reasonable in the circumstances to grant the order sought.
20. In reaching its decision the Tribunal took account of the fact that the Respondent despite being given an opportunity to submit written representations and attend the CMD chose to do neither. The Tribunal also took account of the fact that the Applicants had delayed initiating the service of the Notice to Quit because of concerns regarding the Respondent's circumstances at that time. The Tribunal also noted that it appeared that the Respondent was making arrangements to move out of the property and that she lived alone. It also appeared that she was starting to fall into arrears of rent. The Tribunal also considered the Applicants' position and the fact that although separated they had to continue to remain living together until both the family home and the property could be sold in order that both Applicants could buy a home for themselves and their children.

21. After taking everything into consideration and being satisfied that it had sufficient information before it to make a decision the Tribunal determined that it was reasonable to grant the order for possession.

22. The Tribunal's decision was unanimous.

Decision

23. The tribunal having carefully considered the written representations, documents and oral submissions finds the Applicants entitled to an order for possession of the property and the removal of the Respondent from the property.

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.

Graham Harding

**Graham Harding
Legal Member/Chair**

**28 September 2022
Date**