



**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/22/2164**

**Re: Property at 10 Redbrae Avenue, Bo'ness, EH51 9TW (“the Property”)**

**Parties:**

**Mrs Ann Brand, 78 Main Street, Redding, FK2 9UH (“the Applicant”)**

**Mrs Yvonne Faichen, Mr Gordon Wilson, 10 Redbrae Avenue, Bo'ness, EH51 9TW; 10 Redbrae Avenue, Bo'ness, EH51 9TW (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member) and Leslie Forrest (Ordinary Member)**

**Decision**

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

- **Background**

1. This was the second day of a hearing to consider the application made by the Applicant dated 4<sup>th</sup> July 2022 for an order for repossession of the Property in terms of Rule 66 of the Tribunal Rules. The first hearing took place on 22<sup>nd</sup> May 2023. Both hearings have taken place by teleconference.
2. At the last hearing date only the Applicant’s representative Ms Jacqueline Shields attended. Neither respondent attended. Ms Shields had explained that the Applicant was unable to attend as she was currently away on holiday. She indicated that she was not aware that the Applicant would be needed. The Tribunal continued the hearing as they wished to hear evidence from the landlord herself to determine if the ground of eviction is met and if so whether or not it would be reasonable to grant the order of eviction.
3. The Applicant is the Landlord in a Short Assured Tenancy with the Respondent who is the tenant. The Applicant has title and interest by virtue of owning the property.

4. The Applicant had lodged and the Tribunal had sight and considered the following documents:-
  - a. Application for repossession dated 4<sup>th</sup> July 2022
  - b. Copy Tenancy Agreement for the Property commencing on 30<sup>th</sup> November 2017 and ending initially on 31<sup>st</sup> May 2018 and continuing on a monthly basis thereafter.
  - c. Copy AT5 Notices dated 27<sup>th</sup> November 2017 to Ms Yvonne Faichen and 30<sup>th</sup> November 2017 to Mr Gordon Wilson respectively
  - d. Notice to Quit dated 1<sup>st</sup> August 2022 giving notice to quit by 31<sup>st</sup> October 2022
  - e. S33 Notice dated 2<sup>nd</sup> August 2022 giving notice to remove by 31<sup>st</sup> October 2022
  - f. Copy certificate of posting dated 2<sup>nd</sup> August 2022
  - g. S11 notice to Falkirk Council and evidence of service on Falkirk Council
5. The Respondents sent a written response on 8<sup>th</sup> January advising that the structure and exterior of the accommodation had not been well maintained and that they had complained on numerous occasions about the hearing and dampness which they found to be in every room.
6. In response to a direction from the Tribunal the Applicant's representative submitted a further proof of posting as evidence of service of the notice to quit and s33 notice; an e-mail from the landlord advising she wished to sell the property due to the fact her interest only mortgage would be ending next year and she is 74 then and intends to sell when she gets vacant possession and evidence that there were rent arrears and a response to the Respondents claim the property was damp.
7. After the hearing on 22<sup>nd</sup> May the Applicant's representative submitted further written evidence including a written statement from the Applicant about her personal circumstances and reasons for wishing to sell the Property as well as evidence regarding her mortgage expiring after 18 years in September 2024. The Applicant also noted she had reduced the tenants rent from £550 to £500 and there were now rent arrears.
8. Ms Wilson the second Respondent submitted a further email on 17<sup>th</sup> June confirming that this was the first she had heard of a hearing on 1<sup>st</sup> August, that the first Case Management Discussion had not been cancelled as she and her husband were on that call, that her rent had never been reduced it was always £500 and complaining of a front door that keeps sticking and water ingress and draughts.

## **The Discussion**

9. The Legal Member explained that this was a continued hearing to consider evidence from the parties as at the last hearing date on 22<sup>nd</sup> May 2023, none of the parties attended and the Tribunal only heard from the Applicant's representative Ms Shields. All parties were present at the hearing today and Ms Gillian Inglis attended from Belvoir, representing Ms Brand.
10. Ms Ingles advised that her client was seeking an order of possession because she required to sell the Property due to her mortgage coming to an end next year.

11. The Applicant, Ms Brand confirmed that she was the landlord and the lease with the Respondents had started on 30<sup>th</sup> November 2017. She explained that she had bought the property to earn money for her retirement and that at an inspection of the house last year she was told there was evidence of damp which she was advised was due to not heating the Property properly and that Belvoir her agents felt the Property needed upgrading. The Applicant confirmed that she had a mortgage on the property which was interest only and would finish next year so she instructed the agent to evict the tenant as she required to sell the house. She explained the mortgage was originally for 18 years as they would not lend to someone after 75 and that meant she had to sell it next year as she would not be able, at 74 to remortgage it.
12. The Applicant confirmed she had no other method of paying off the mortgage and that in the meantime her mortgage payments had increased substantially to £392 per month and there were now arrears on the Property of approximately £2,400. Under further questions she confirmed her intention was to sell the house as soon as possible; that the tenants had paid the last 3 months of rent but that she had now raised a separate application for payment of rent arrears.
13. Ms Ingles confirmed the exact arrears today were £2,401.47 and explained that a lump sum had been received which went towards the arrears and the tenants had paid the rent due in May, June and July.
14. Mr Wilson spoke first to confirm that he and his wife had initially been told by a representative of Belvoir that they could have the Property on a long term let and they had thought they could stay there for as long as they wanted. He advised that he had not spoken directly to the Landlord and was never told there was a point at which she would have to sell. Mrs Wilson agreed saying that they would not have taken the house if they knew this could happen.
15. With regard to the ground of eviction Mr Wilson acknowledged that he appreciated the landlord's position of not being able to get another mortgage and advised that he and his wife have been trying to find somewhere to live but the Council advised them they needed an eviction notice to allow them to get help. He confirmed they were on the council list. Mr Wilson also acknowledged some rent had not been paid and said they were both working now and trying to pay the rent arrears.
16. Mrs Wilson advised that they had asked for an eviction order during covid which she said would have helped as they then would not have had this amount of rent arrears but she said this was refused. She also mentioned that the front door was still an issue and a fire hazard as it sticks so much, as well as mentioning the other issues with the house.

## **Findings in Fact**

17. The Applicant and Respondent entered into a short assured tenancy of the Property for a period of 6 months from 30<sup>th</sup> November 2017 to 31<sup>st</sup> May 2018 and from month to month thereafter until terminated by written notice.
18. The Applicant is the Landlord and has served Form AT5s on the Respondents who are the Tenant prior to the creation of the tenancy.
19. The Tenancy is a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988.

20. The Applicant has served a Notice to quit dated 2<sup>nd</sup> August 2022 terminating the contractual tenancy on 31<sup>st</sup> October 2022
21. A S33 notice was served on the Respondent giving 2 months' notice that they required possession of the Property by 31<sup>st</sup> October 2022.
22. A section 11 notice was sent to Falkirk Council on
23. The Applicant's buy to let mortgage will come to an end next year when she requires to repay the capital of £67,500.
24. Due to the Applicant's age she would not be able to remortgage the Property.
25. The Respondents who are the tenants have not vacated the property, but are seeking an offer of housing from the Council and require an order for eviction to enable them to get assistance.
26. Some arrears have accrued during the Tenancy.
27. A s11 notice in terms of the Homelessness etc. (Scotland) Act 2003 was served on the Local Authority.
28. The Tribunal finds it reasonable that an order for eviction be granted.

### **Reasons for Decision**

29. The Applicants entered into a Short Assured Tenancy with the Respondent on the original term of the tenancy was 6 months and an AT5 form was served prior to that date. The Applicant has served a notice to quit terminating the tenancy on an ish or termination date namely 31<sup>st</sup> October 2023. She has also given notice of her intention to require possession in terms of S33 of the Act.
30. S33 of the Act says "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 for Scotland may make an order for possession of the house if it is satisfied-
  - a) That the short assured tenancy has reached its ish
  - b) That tacit relocation is not operating
  - c) That no further contractual tenancy 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.
31. The Short Assured tenancy has reached its ish, tacit relocation is not operating and there is no further contractual tenancy in existence, so the Applicant having given adequate notice in terms of S33 above, can and has applied to repossess the Property. However since April 2020 and Section 2 and Schedule 1 of the Coronavirus (Scotland) Act 2020, there has been a change to the law on repossessions and before an order for possession is granted the Tribunal has to be satisfied that it is reasonable to grant the order.
32. The Tribunal considered carefully the submissions from the Applicant and the written evidence it had before it.
33. The Tribunal is satisfied the appropriate notices have been served bringing the contractual tenancy to an end and giving notice under S33 as well as notice to the local authority.
34. The Applicant has served the relevant notices nearly a year ago and the Respondents have indicated that they have been in contact with the council about rehousing but have been told they will not receive assistance until they have an order of eviction granted against them. The Applicant is a 74 year old

lady whose interest only mortgage terminates next year and she requires to sell the house to realise the money to pay the capital for the mortgage. The Tribunal notes that the tenant has raised issues with the condition of the property, and the landlord believes these are at least partly caused by lack of heating and ventilation in the house by the tenant. It would appear that the landlord believes she requires to carry out renovations before selling the property and the Respondents have issues with cold and damp in the property. The Tribunal has not explored these further as they are not relevant to the reason for the application which is that the Applicant wishes to sell the Property.

35. The Tribunal notes that the Respondents appreciate the Applicant's position with regard to her mortgage and have tried to seek alternative accommodation from the council but feel that they need an eviction order in order to get assistance. In addition there are some arrears of rent which appear to have arisen during the covid period when the Respondents were out of work. It is noted the Respondents have paid some of the arrears and are currently paying the monthly rent.
36. The Tribunal balancing the interests of both parties, finds it is reasonable to grant an order for repossession.
37. The Tribunal notes proceedings to start enforcement of the eviction order granted today cannot be commenced for at least 30 days, when the order will be sent to the Applicant. Due to the date of this application and the service of the Notice to Quit and S33 notice the Cost of Living (Tenant Protection) (Scotland) Act 2022 does not apply to this application.

- **Decision**

An order for repossession was granted.

### **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.**

**Jan Todd**

**Legal Member/Chair**

**1<sup>st</sup> August 2023**

**Date**