



**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/22/2208

Re: Property at 32 2F2 Henderson Street, Edinburgh, EH6 6DE (“the Property”)

Parties:

**Miss Dorothy Allison, 46 The Causeway, Duddingston Village, Edinburgh, EH15
3PZ (“the Applicant”)**

**Mr Nicholas Ryan, 32 2F2 Henderson Street, Edinburgh, EH6 6DE (“the
Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member) and Sandra Brydon (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 Applicant and suspend the enforcement of said
order for a period of four months**

Background

- 1 By application to the Tribunal the Applicant 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 7 December 2009 together with Form AT5;
 - (ii) Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988 both dated 29 July 2021 together with recorded delivery receipt;

- (iii) Email from the Respondent confirming receipt of the Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988; and
 - (iv) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Edinburgh City Council 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. However a Direction was issued requiring the Applicant to address the Tribunal at the Case Management Discussion on whether the Applicant had produced valid evidence of service of the Notice to Quit. There was no response to the Direction.
 - 3 A Case Management Discussion was assigned for the 13 October 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 Respondents by Sheriff Officers. No written representations were received from the Respondents in response to service of the application paperwork.

Case Management Discussions

- 4 The Case Management Discussion took place by teleconference on 13 October 2022. The Applicant was present and represented by Mr Aaron Pontin of Umega Lettings. The Respondent was also present.
- 5 The Legal Member explained the legal test to be applied and asked the parties to address the Tribunal on their respective positions.
- 6 Mr Pontin explained that the Applicant was seeking an eviction order. He confirmed that his firm had been in constant communication with the Respondent over the last six or seven months. They had been trying to help in any way they could to relocate him to a housing association property or a private let. However it had come to the point where they had done all they could and he needed to take the reins for himself. The Applicant was now looking to sell the property as it had become a bit of a burden. There were concerns about the Respondent's welfare within the property which had become quite dilapidated. They were worried about the Respondent's ability to manage himself. Mr Pontin confirmed that he had visited the property a couple of times and it had not been maintained to a good standard. It was a bit worn out.
- 7 In response to questions from the Tribunal Mr Pontin confirmed that this was the only property the Applicant let out. There were no other issues with the tenancy, the rent was up to date. The Applicant wished to sell the property to relieve the burden on her, which was in part a result of it not being maintained as it should be, which could impact on other properties in the block. Mr Pontin

gave the example of a leak from the property into the flat below which wasn't reported to his firm or the Applicant directly. It was a risk for that to happen and it could cause issues to other people within the block. Mr Pontin assured the Tribunal that all safety certificates were in place. In terms of the actual upkeep the property would need extensive work to bring it back up to a saleable condition. Mr Point confirmed that the Applicant had not engaged estate agents as yet to sell the property. That would all be put in place once the situation with the tenancy was resolved. The focus was on ensuring everything was fine in the property in terms of health and safety, and there was no risk to the flats below.

- 8 Mr Ryan addressed the Tribunal. He confirmed that he wished to help the Applicant as much as possible however he had faced difficulties in finding alternative accommodation during the notice period. Everything was locked down. More recently he had the chance to look at properties but the housing market was very odd at the moment. He would like to move due to the dilapidated state of the property and the problems with it. It needed a lot of work. With regard to the leak referred to by Mr Pontin he confirmed that this had been caused by an ancient sink in the kitchen area. It had been immediately fixed. Mr Ryan explained that he agreed with the points made by the Applicant and he had no quarrel with their wish to recover the property. However he had found it difficult to view other properties due to his age, he was not as mobile. This was another reason why he would like to move out as the flat was on the second floor. His mobility was the only thing that was a problem, otherwise he was in good health generally. Mr Ryan advised that he had spoken with estate agents in and around Edinburgh, as well as online. Nothing had presented itself.
- 9 In response to questions from the Tribunal Mr Ryan confirmed that he was 80 years old. He had not spoken to the local authority as he had never been in council accommodation. He had lived in the private sector all his life. Similarly he had not spoken with housing associations as he wished to remain in the private sector. He explained that his family mostly resided in the south of England. He did have friends in the Edinburgh area but they had their own problems to deal with.
- 10 In response to further questions from the Tribunal Mr Pontin confirmed that the property had a mortgage over it. He confirmed that his predecessor had gotten in touch with Housing Options Scotland in August last year in an attempt to assist the Respondent. They had also contacted Shelter Scotland. They had set up conversations between the Respondent and these organisations. There was however only so much they could help with on that front as the Respondent was required to provide his personal information to proceed with matters. Mr Pontin explained that he knew the market for private rents was very difficult because there was so much demand. His firm had made it clear that they wanted to help the Respondent as much as possible. However they had gotten to the point where they could only do so much and there was no other option but to apply for an eviction order.

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 Applicant entered into a Short Assured Tenancy Agreement with the Respondents which commenced on 7 December 2009.
- 13 The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.

- 14 On 29 July 2021 the Applicant delivered a Notice under section 33 of the Housing (Scotland) Act stating that the Applicant required the property back by 6 February 2022 and a Notice to Quit to the Respondent which sought to terminate the tenancy as at that date. The Notice to Quit was in the prescribed form.
- 15 The Respondent is 80 years old.
- 16 The Respondent has been seeking alternative accommodation but has not yet found a property.
- 17 The Applicant requires to sell the property.
- 18 The property requires refurbishment. The property is a second floor flat.
- 19 The Respondent has mobility issues and requires a ground floor or first floor flat.
- 20 The Applicant's agent have offered assistance to the Respondent in securing alternative accommodation through directing him to advice agencies.
- 21 It is reasonable to make the order sought by the Applicant.
- 22 The provisions of section 33 of the Housing (Scotland) Act 1988 have been met.

Reasons for Decision

- 23 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. 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.
- 24 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.
- 25 The Tribunal had significant concerns regarding the Respondent's vulnerability as an 80 year old gentleman. However it was clear that the property was, or would soon become, unsuitable for him in light of his mobility issues. The Tribunal also had concerns regarding the condition of the property, as outlined by both Mr Pontin and the Respondent during the Case Management Discussion. It was clearly in the Respondent's best interests to seek alternative accommodation in a home more suited to his needs. The Respondent had stated that he did not oppose the Applicant's wish to recover the property. He

simply required more time to source new accommodation, which had proved challenging in the current market. The Tribunal did note however that he had not explored all options available to him, nor had he sought support he is entitled to as a vulnerable adult to secure the most suitable housing and he has so far restricted his search to the private sector where he was keen to remain.

26 Whilst the Tribunal was conscious that the age of the Respondent was a significant factor in considering the reasonableness of granting the order, ultimately the Tribunal concluded that in these particular circumstances it would be of benefit to the Respondent were he to move from the property. The Tribunal therefore reached the view that it would be reasonable to make an order in this case. However, taking cognisance of the Respondent's challenges in sourcing alternative accommodation the Tribunal determined to suspend enforcement of the order for a period of four months to allow the Respondent further time to find a suitable property. As an observation the Tribunal would urge the Respondent to consider all options available to him, including those out with the private sector such as local authority housing or local housing associations, to ensure he can secure accommodation that meets his needs.

27 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.

R O'Hare

18 October 2022

Legal Member/Chair

Date