



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/22/3225

Re: Property at 25 Cranston Avenue, Airdrie, ML6 7FD (“the Property”)

Parties:

Ms Kelly Gardiner or McGowan, 24 Springfield Grove, Barrhead, G78 2SZ (“the Applicant”)

Ms Linda Venesky, 25 Cranston Avenue, Airdrie, ML6 7FD (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Elizabeth Williams (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988.

- Background
 1. An application dated 5 September 2022 was submitted to the Tribunal under Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a repossession order against the Respondent upon termination of a short assured tenancy agreement.
- The Case Management Discussion
 2. A Case Management Discussion (“CMD”) took place on 3 February 2023. The Applicant was represented by Ms Cargill of Mellicks, solicitors. The Respondent was personally present and represented herself. The Respondent’s daughter, Ashley Carson, was also present as a supporter.
 3. The Applicant’s representative moved for the order for repossession to be granted as sought. The parties had entered into a Short Assured Tenancy Agreement. The Applicant had served a Notice to Quit and Notice in terms of section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”) on the

Respondent. The Respondent had failed to remove from the Property and continued to reside therein. The Applicant required repossession of the Property in order to sell the Property. The Applicant had separated from her husband and the property required to be sold in order to meet an agreed financial settlement as part of their separation and divorce proceedings.

4. The Respondent confirmed that she had applied to the local authority to be rehoused, but was advised that they could not assist her until the case had been decided by the Tribunal. The Respondent advised that she suffered from a number of health issues, including depression, anxiety and a spinal condition. Her daughter lives with her and is also her carer. Her grandson also lives with her. He is 11 years old and is autistic.
5. The Respondent submitted that there had been some repairing issues in the Property and that Environmental Health had been involved (albeit it was suggested that this was some time ago.) The Respondent confirmed that she had not sought any advice on the repairing issue nor had she submitted an application to the Tribunal as regards the property not meeting the repairing standard. The Applicant's representative submitted that the issue of repair was irrelevant to the application for repossession under Rule 66. All repairs aside from a cracked window and door had been completed and any delays in doing so were due to the Respondent's failure to provide reasonable access to the Property.

- Findings in Fact

6. The Tribunal made the following findings in fact:

- (i) The parties entered into a Short Assured Tenancy Agreement ("the Agreement") which commenced 31 August 2016.
- (ii) A Notice to Quit and notice under section 33 of the 1988 Act were served on the Respondent on 24 February 2022 by recorded delivery post;
- (iii) The Notice to Quit and notice under section 33 of the 1988 Act required the Respondent to remove from the Property by 31 August 2022;
- (iv) The Respondent had failed to remove from the Property and continued to reside therein;
- (v) The Applicant required to sell the Property as part of a financial agreement being reached under her separation from her husband and consequent divorce proceedings.

- Reasons for Decision

7. The Tribunal was satisfied that the terms of section 33 of the 1988 Act had been met: namely that the tenancy had reached its end; tacit relocation was not operating; a notice had been served in terms of that section giving at least 6 months' notice; and that it was reasonable to grant the Order. Whilst the Tribunal had some sympathy with the Respondent and her family's health conditions, the Tribunal also had to take into consideration the Applicant's circumstances and need to sell the Property. It was clear to the Tribunal that

the Respondent wished to be rehoused by the local authority. It is hoped that the Order being granted may enable any such rehousing to now take place.

- Decision
8. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988.

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.

Fiona Watson

Legal Member/Chair

Date: 3 February 2023