



**Decision 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/22/3356**

**Re: Property at 7 West Avenue, Uddingston, Glasgow, G71 6HB (“the Property”)**

**Parties:**

**Mr John Brady, 218/220 Swinton Road, Baillieston, Glasgow, G69 6DP (“the Applicant”)**

**Ms Rachel Ward, 7 West Avenue, Uddingston, Glasgow, G71 6HB (“the Respondent”)**

**Tribunal Members:**

**Ruth O’Hare (Legal Member) and Angus Anderson (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order against the Respondent in favour of the Applicant and suspend the period for enforcement until 30 April 2023**

**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 14 September 2011;
  - (ii) Notice to Quit dated 8 February 2022 together with proof of service by Sheriff Officers;

- (iii) Notice under section 33 of the Housing (Scotland) Act 1988 dated 27 January 2022 together with proof of delivery by Sheriff Officers;
  - (iv) Notice under section 11 of the Homelessness (Scotland) Act 2003 to South Lanarkshire Council; and
  - (v) Form AT5 dated 1 September 2021 together with signed acknowledgement from the Respondent.
- 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 assigned for the 23<sup>rd</sup> February 2023 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.
- 3 On 22<sup>nd</sup> February 2023 the Tribunal received an email from Mr John McAuley, Solicitor of Ennova Law. He confirmed that he had been instructed to represent the Applicant and provided a copy of an acknowledgement signed by the Respondent dated 14 September 2011, purporting to be an acknowledgement of a Form AT5.

### **Case Management Discussion**

- 4 The Case Management Discussion took place by teleconference on 23 February 2023. The Applicant was represented by Mr McAuley. The Applicant himself was not in attendance. The Respondent was present.
- 5 The Tribunal explained the purpose of the Case Management Discussion and asked the parties to address it on their respective positions.
- 6 Mr McAuley advised that he was seeking an eviction order. He referred to the Notice to Quit and Notice under section 33 that had both been served on the Respondent by Sheriff Officers. The application was based on a short assured tenancy that had commenced on 14 September 2011. He referred to the acknowledgement of the Form AT5 of same date that had been lodged in advance of the Case Management Discussion. The Applicant had been unable to find a copy of the original Form AT5 so had tried to replicate a new one, hence why the AT5 originally lodged was dated November 2021. He had however found a copy of the acknowledgement letter that the Respondent had signed upon receiving the original Form AT5. The Applicant was satisfied that a short assured tenancy had been created. Mr McAuley further referred to the Notice to Quit which brought the tenancy to an end as at 13<sup>th</sup> August 2022 which was a valid ish date.

- 7 Mr McAuley went on to address the question of reasonableness. He advised that the Applicant and the Respondent had a good relationship. The Respondent was however now happy to move on and the Applicant wished to start a new chapter of his life. The Respondent had received an offer for a new property. He didn't know the Applicant's plans for the property but he was not seeking to relet straight away. In response to questions from the Tribunal Mr McAuley expressed his belief that this was the only property let by the Applicant and was managed by his sister.
- 8 The Tribunal then heard from the Respondent. She confirmed that she had received a verbal offer of housing from Clyde Valley Housing Association. The property would hopefully be ready around the 7<sup>th</sup> or 8<sup>th</sup> March, but definitely before the 30<sup>th</sup> March. She did not oppose the granting of an eviction order and was happy for it to go ahead. The new property had a lower rent, £390 as opposed to £550. It was just up the road from her current property and her children would be able to attend the same school. She confirmed she had two children, aged 11 and 14. She herself was at university and in receipt of universal credit. The Respondent confirmed that she had taken advice on the application and was ready to move on. She confirmed that her relationship with the Applicant had been positive. In response to questions from the Tribunal the Respondent confirmed that she had received a Form AT5 prior to signing her original tenancy agreement.

### **Relevant Legislation**

- 9 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 ish;
- 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 time 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**

- 10 The Applicant entered into a Short Assured Tenancy Agreement with the Respondents which commenced on 14 September 2011 for a period until 13 March 2012 and monthly thereafter.
- 11 The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 12 On 8 February 2022 the Applicant delivered a Notice under section 33 of the Housing (Scotland) Act stating that the Applicant required the property back by 13 August 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. The Notices were served by Sheriff Officers.
- 13 The Notice to Quit terminates the tenancy as at 13 August 2022 which is a valid date.
- 14 The Respondent has received a verbal offer of housing from Clyde Valley Housing Association.
- 15 The rent for the new property is £390 per month. The rent for the Respondent's current tenancy is £550 per month.
- 16 The Respondent resides in the property with two children aged 11 and 14.
- 17 The Respondent attends university and is in receipt of universal credit.

- 18 The Applicant and the Respondent have maintained a good relationship.
- 19 The Respondent wishes to move on from the property.
- 20 It is reasonable to make the order sought by the Applicant.
- 21 The provisions of section 33 of the Housing (Scotland) Act 1988 have been met.

### **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. 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 Tribunal noted the cordial relationship shared by the parties, both of whom were accepting of the tenancy coming to an end. The Tribunal also had cognisance of the fact that the Respondent had been offered another property and was keen to move out, having regard to the lesser rent she would be due in her new accommodation. Whilst the offer was only verbal at this stage the Respondent was confident that it would go ahead and she would be moving in by the end of March. The Tribunal did note the presence of the two children within the property, however given that the Respondent had confirmed that she did not oppose the application and had reached that view having taken advice, the Tribunal was satisfied having regard to the particular circumstances of this case that it would be reasonable to make an eviction order.
- 25 The Tribunal did however wish to give the Respondent sufficient time to remove from the property and on that basis determined to suspend enforcement of the eviction order until 30 April 2023.
- 26 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

**23 February 2023**

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**Legal Member/Chair**

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**Date**