



**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/22/4225

**Re: Property at 2 Victoria Road, Fauldhouse, West Lothian, EH47 9LF (“the
Property”)**

Parties:

**Ms Marell Gillespie, Residence Amusa C21, Via degli Angioini, Marina di
Caulonia RC, 89040 Italia (“the Applicant”)**

**Ms Anne Marie Hadley, 2 Victoria Road, Fauldhouse, West Lothian, EH47 9LF
 (“the Respondent”)**

Tribunal Members:

Andrew Upton (Legal Member) and Frances Wood (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an eviction order should be granted and enforcement
thereof superseded for a period of six months.**

STATEMENT OF REASONS

1. This Application called for a Case Management Discussion by WebEx on 2 August 2023. The Parties were both present.
2. In this Application the Applicant seeks an eviction order. It is a matter of agreement that the Applicant is the landlord, and the Respondent the tenant, of the Property under and in terms of a Short Assured Tenancy Agreement. The contractual tenancy has been brought to an end at its natural expiry by service of a notice to quit. The Applicant has served notice on the Respondent that she requires possession of the Property under section 33(1)(d) of the Housing (Scotland) Act 1988 (“the 1988 Act”). Accordingly, the only matter for

the Tribunal to determine is whether it is reasonable to grant the eviction order.

3. The Applicant's position is straightforward. She is 67 years old and no longer wishes to be a residential landlord. She wishes to retire. She is deaf. She resides in Italy with her husband. Historically her husband was able to assist her with the management of the Property by telephone, but he is now suffering from dementia and cannot do so anymore. For those reasons, the Applicant does not want to continue as a landlord. The Applicant spoke briefly of the Respondent having stopped paying rent for two months (October and November 2022) following the replacement of certain doors in the Property. In December 2022, the Applicant contacted the local authority and arranged for the Respondent's housing benefit to be paid to her directly. An additional payment was being made directly from the benefits office as a deduction from benefit to pay the arrears, which are reducing but remain over £800.
4. The Respondent lives at the Property with her three children, aged 7, 16 and 19. Her eldest child is in part-time employment. Her two younger children are in full time education. Her youngest daughter attends a local primary school. Her son aged 16 travels to a secondary school in Blackburn. The family also has three dogs in the Property. The Respondent is not in employment. The Respondent spoke of have issues with her hips and back. In particular, she suffers from a bulging disc which causes intermittent pain in her back and legs, and has in recent years suffered pronounced pain in her hip as a result of neo-natal dislocation. She takes painkillers to deal with those issues and is in receipt of disability living allowance. She also suffers from anxiety and has taken prescription medication to treat her mental health for the past eight years.
5. The house has three bedrooms. There is a ground floor bedroom with an ensuite shower room. The shower room is a walk-in shower. The property was previously adapted for a previous occupier who had a disability but is not adapted specifically for the Respondent. The Respondent uses the ground floor bedroom and rarely goes upstairs. She did not consider that she required a property with a ground floor bedroom or walk in shower, but said that the Property suited her needs. The Respondent's primary focus was on staying in Fauldhouse so that her youngest daughter did not need to change school though she would also accept a property in Longridge as she would still be able to get her younger daughter to school.
6. The Respondent said that she had spoken regularly with the local authority with a view to being rehoused. She was waiting on a property becoming available. She spoke of having a reasonable number of points to elevate her housing application listing. The Respondent was concerned and anxious about the prospect of homelessness, and in particular the prospect of being required to leave Fauldhouse and give up her dogs. She said that the Property was in good condition, and that the rent was being paid. She spoke of having not paid rent in October and November 2022 due to her

unhappiness with the extent of a repair, but confirmed that the unpaid sums were being paid monthly.

7. Neither party took issue with the other party's assertions. For that reason, the Tribunal determined that a further Hearing was unnecessary. The Tribunal has the power, in terms of Rule 17(4) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") to do anything at a CMD that it may do at a Hearing, including make a decision. Having regard to the overriding objective in Rule 2 to deal with proceedings justly, including by avoiding unnecessary delay, the Tribunal considered that it should make a decision at the CMD.
8. In reaching a decision, the Tribunal is required to consider all of the circumstances of the case, and give such weight as it thinks appropriate to the factors which are put in issue before reaching a conclusion. That is the approach proposed by Lord Greene MR in *Cumming v Danson*, [1942] 2 All ER 653 and page 655:-

"[I]n considering reasonableness... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad commonsense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account."

9. It goes without saying that the making of an eviction order will, in almost every circumstance, have a profound effect on a tenant. There will likely be increased stress and anxiety surrounding moving home and the upheaval that creates. However, in all of the circumstances of this case, the Tribunal considered that the factor which attracts the greatest weight is the Applicant's desire to no longer be a landlord. She lives abroad, and her personal circumstances have changed such that it is now so intolerably difficult to manage the letting remotely that she does not want to do it. The potential detriment to the Respondent can be offset to some extent by ensuring that she has sufficient time to find alternative accommodation with support from the local authority.
10. In that respect, the Tribunal is of the view that a period of six months is appropriate. That is the period that the Respondent will be afforded in any event if the current protections in the Cost of Living (Tenant Protection) Scotland Act 2022 are extended beyond 30 September 2023 as expected. However, in absence of any extension having been granted by the Scottish Parliament, the Tribunal will supersede enforcement of the eviction order by 6 months from the date of the order.

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.

Andrew Upton

02/08/2023

Legal Member/Chair

Date