



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/23/0162

Re: Property at 5 Woodrow, Gorebridge, Midlothian, EH23 4AS (“the Property”)

Parties:

Mr Jamie Anderson, 32 Meadowbank Crescent, Ormiston, EH35 4LG (“the Applicant”)

Miss Kylie Hay, 5 Woodrow, Gorebridge, Midlothian, EH23 4AS (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Mike Scott (Ordinary Member)

Decision (in absence of the Respondent)

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

This Hearing was a Case Management Discussion fixed in terms of Rule 17 of the Procedure Rules and concerned an Application for Recovery of Possession on termination of a short assured tenancy under Section 33 of the Housing (Scotland) Act 1988. The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved. The purpose of the hearing was explained. It was understood a final decision on the Application could also be made.

Attendance and Representation

The Applicant was represented by Jeffrey Livingston, Landlord Specialist Services Scotland, 5 South Charlotte Street, Edinburgh, EH2 4AN

The Respondent was not present. She was served by Sheriff Officer on 28th April 2023.

Preliminary Matters

The Respondent prior to the Hearing had lodged written representations and was aware of the Hearing. The written representations lodged stated the Respondent was not opposed to an Order and also sought an order to assist her in obtaining alternative accommodation. The Applicant's representative had received a copy of same.

There was no recent contact but the Applicant's representative said that he believed the landlords have had some contact with each other and continue to do so.

There were no other preliminary matters raised.

Case Management Discussion

The Applicant's representative said that the Applicant sought an order for Repossession in terms of Section 33 of the Housing (Scotland) Act 1988. The Applicant has a mortgage on the property and the mortgage rate is now exceeding the rental income. The Applicant's representative said that the Applicant is a self employed joiner and this is the only property he rents out. It was originally a family home some years ago.

The Applicant's representative said that the Respondent is in full time employment and works for the NHS as a nurse in oncology. She has no dependents in the property and is seeking secure accommodation. She is on or around 46 years of age.

Facts Found and Reasons for Decision

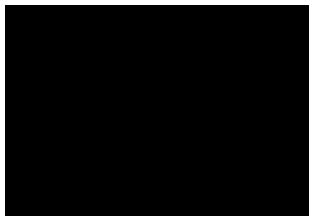
- 1. The Tribunal was satisfied that a decision could be made in the absence of the Respondent and at a Case Management Discussion. There were no material matters in dispute.**
- 2. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property.**
- 3. The Tribunal was satisfied that the tenancy was in terms of Section 32(1) of the 1988 Act, a short assured tenancy for not less than 6**

months and in relation to which a prescribed notice namely a valid AT5 had been served before creation of the short assured tenancy. The Respondent made no submission that the AT5 had not been served correctly at the outset of the tenancy.

4. In terms of Section 33 of the 1988 Act the Tribunal considered that the Short Assured Tenancy had reached its ish.
5. Further the Tribunal was satisfied that no tacit relocation was operating, no further contractual tenancy was in existence and a valid Notice to Quite had been served on the Respondent terminating the tenancy with the necessary notice given to the Respondent.
6. Accordingly, in terms of Section 33 of the 1988 Act the Tribunal considered it was appropriate to grant an order against the Respondent for possession of the Property.
7. The Tribunal noted the Local Authority under the 2016 had been notified.
8. On the evidence available to the Tribunal the Respondent had no dependents residing with her and the Applicant sought to recover the property as the rental income did not now cover the mortgage. He had no other rental properties. The Tribunal found an Order was reasonable in terms of the Coronavirus (Scotland) Act 2020.
9. The Application is affected by the Cost of Living (Protection for Tenants) (Scotland) Act 2022.

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.



5th June 2023

Legal Member/Chair

Date