



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 Housing (Scotland) Act 1988 (“the 1988 Act”)

Chamber Ref: FTS/HPC/EV/23/0702

Re: Property at 10 Stoneybank Crescent, Maindoor, Musselburgh, EH21 6HP (“the Property”)

Parties:

Mrs Barbara Anne Edgar, 49 Galt Terrace, Musselburgh, EH21 8DU (“the Applicant”)

Lisa Doran, Kirsty Annette Fordyce, 10 Stoneybank Crescent, Maindoor, Musselburgh, EH21 6HP (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondents in favour of the Applicant.

Background

1. The Applicant seeks an order for possession of the property in terms of Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). A short assured tenancy agreement, AT5 notices, Notices to Quit, Section 33 Notices, Sheriff Officer certificates of service and Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 were lodged in support of the application.
2. A copy of the application and supporting documents were served on the Respondents by Sheriff Officer. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 19 May 2023 at 2pm and that they were required to participate. Both were provided with a telephone

number and passcode.

3. The CMD took place by telephone conference call on 19 May 2023. The Applicant was represented by Mr Gray. The Respondents both participated.

Case Management discussion

4. Ms Doran told the Tribunal that the application is not opposed. It had been stressful to receive the Notice to Quit before Christmas, but they do not oppose the order. They have discussed the application with their housing officer and have been told that the Local Authority will not provide them with alternative accommodation until an eviction order is granted. They have attempted to find other accommodation but cannot afford another private let. Ms Doran also advised the Tribunal that the Respondents reside at the property with her stepson, Ms Fordyce's son, who is 19 years of age. She is in full time work. Ms Fordyce works part time and receives DLA, as she suffers from epilepsy and osteoarthritis. The housing officer has advised them about the Cost of Living Act and they are aware that this means a delay in enforcement of eviction orders.
5. Mr Gray told the Tribunal that the Applicant is seeking recovery of possession of the property as she wishes to move back into it. She is 71 years of age, and her current property is too big for her. She has a purchaser for it and intends to move into the property when it becomes vacant. There are no other reasons for the application and no rent arrears or tenancy related issues. The Applicant is aware of the Cost of Living Act and appreciates that she would not be able to enforce an order for 6 months.

Findings in Fact

6. The Applicant is the owner and landlord of the property.
7. The Respondents are the tenants of the property in terms of a short assured tenancy agreement.
8. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondents on 20 December 2022.
9. The Respondents reside at the property with their 19 year old son. The second Respondent suffers from epilepsy and osteoarthritis. They are both in employment.
10. The Applicant is 71 years of age and wishes to move back into the property.

Reasons for Decision

11. The application was submitted with a short assured tenancy agreement and two AT5 Notices. The initial term of the tenancy was six months from 1 April 2015 until 1 October 2015 with a provision that it continued on a month to month basis thereafter.
12. Section 32 of the 1988 Act states “(1) A short assured tenancy is an assured tenancy - (a) which is for a term of not less than 6 months; and (b) in respect of which a notice is served as mentioned in subsection (2) below. (2) The notice referred to in subsection (1)(b) above is on which – (a) is in such form as may be prescribed; (b) is served before the creation of the short assured tenancy; (c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under the tenancy; and (d) states that the assured tenancy to which it relates is to be a short assured tenancy.”
13. The Tribunal is satisfied that the tenancy agreement between the parties was for an initial term of 6 months and therefore meets the requirements of Section 32(1) of the 1988 Act. The Tribunal is also satisfied that AT5 Notice was given to the Respondents prior to the creation of the tenancy. In the circumstances, the Tribunal determines that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act.
14. From the documents submitted with the application, the Tribunal is satisfied that the Applicant served a Notice to Quit and Section 33 Notice on the Respondents on 20 December 2022. The Notice to Quit called upon the Respondents to vacate the property on 1 March 2023, an ish date. The Notice contains the information prescribed by the Assured tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and complies with the terms of Section 112 of the Rent (Scotland) Act 1984. The Tribunal is satisfied that the Notice to Quit is valid and that the tenancy contract has been terminated. The Section 33 Notice was also served on 20 December 2022 and gave the Respondents 2 months notice that the Landlord wished to recover possession of the property. A Section 11 Notice was submitted with the application, with evidence that it was sent to the Local Authority. The Applicant has therefore complied with Section 19A of the 1988 Act.
15. Section 33 of the 1988 Act, (as amended by the Coronavirus (Recovery and Reform) (Scotland) Act 2022) states “(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; (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” Subsection 2 states “The period of notice to be given under subsection (1)(d) above shall be – (1) if the terms of the tenancy provide, in

relation to such notice, for a period of more than two months, that period; (ii) in any other case, two months". The Tribunal is satisfied that the tenancy has reached its finish and, as the Applicant has served a valid Notice to Quit, that tacit relocation is not operating. A valid notice in terms of section 33(d) has also been served on the Respondent, giving at least two months' notice that the Applicant required possession of the property.

16. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession, in terms of Section 33(e) of the 1988 Act.

17. The Tribunal noted the following: -

(a) Although the Respondents have found their position stressful, they do not oppose the application and are actively seeking alternative accommodation.

(b) The second Respondent has a disability.

(c) The Respondents are both in employment and not dependant on state benefits

(d) There are no rent arrears or other tenancy related issues.

(e) The housing officer has advised the Respondents that they will not be a priority for alternative housing until an eviction order is granted.

(f) The Applicant is 71 years of age. She wishes to downsize and move back into the property. She is selling the house in which she currently lives as it is now too large for her to manage.

18. For the reasons specified in Paragraph 17(a), (c), (d) and (e), the Tribunal is satisfied that it would be reasonable to grant the application. Although the Respondents have found their position stressful, and have not yet been able to source alternative accommodation, the provisions of the Cost of Living Act 2022 mean that they will have a number of months to find somewhere else to live

19. The Tribunal is satisfied that the Applicant has complied with the provisions of the 1988 Act and that it would be reasonable to grant the order.

Decision

20. The Tribunal determines that an order for possession of the property should be granted against the Respondents.

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.

Josephine Bonnar

Josephine Bonnar, Legal Member

19 May 2023