



**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/23/0871

Re: Property at 2/L 14 Forfar Road, Dundee, DD4 7AS (“the Property”)

Parties:

**Mr Colin Nimmon, Jennifer Nimmon, 36 Kirkwoods Park, Lisburn, BT28 3RR
 (“the Applicant”)**

**Danny Grieve, Adele McLeod, 2/L 14 Forfar Road, Dundee, DD4 7AS (“the
Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member) and James Battye (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined to make an eviction order**

Background

- 1 By application to the Tribunal the Applicants 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 Applicants provided the following documentation:-
 - (i) Short Assured Tenancy Agreement between the parties dated 28 November 2016 together with Form AT5;
 - (ii) Notice to Quit dated 15 August 2022 together with proof of service by Sheriff Officers on 17 November 2022;

- (iii) Notice under section 33 of the Housing (Scotland) Act 1988 dated 15th August 2022 together with proof of service by Sheriff Officers on 17 August 2022; and
 - (iv) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Dundee City Council.
- 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 13 July 2023. 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.

Case Management Discussion

- 3 The Case Management Discussion took place by teleconference on 13 July 2023. The Applicants were represented by Mr David Gray, Solicitor. Mr Grieve was present on behalf of the Respondents.
- 4 The Tribunal explained the purpose of the Case Management Discussion and the legal test and asked parties to address them on the application.
- 5 Mr Gray explained that the application had been brought under section 33 of the Housing (Scotland) Act 1988. The background was that the property had been owned by four joint owners. However there had been an irretrievable breakdown in the relationship and a judicial factor had been appointed. There was no common ground, all communication was now through solicitors. Mr Gray stated that the rent barely covered the mortgage and the owners were not making a profit. It was simply unsustainable therefore the Applicants had taken steps to bring the tenancy to an end.
- 6 Mr Grieve explained that he did not have any contact with the owners directly, he had let the property through an agency. Rent had been paid although in recent months he had withheld some payments because of disrepair. There had also been some confusion as to who he was due to pay rent to following a meeting between Mr Grieve and the joint owners. The property was falling apart. He gave examples of the bathroom leaking and the windows not closing. Mr Grieve stated that he and his family could not continue in the property and were not opposing the granting of an eviction order. He was actively seeking accommodation with the local authority. He confirmed that he lived with his four children and that made it difficult to find a suitable property. The current tenancy was a two bedroom property which was simply too small and he wanted out of the property.

Relevant Legislation

- 7 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 finish 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.”

The Cost of Living (Tenant Protection) (Scotland) Act 2022 is also relevant to this application, it having been received by the Tribunal after 28 October 2022.

Findings in Fact and Law

- 8 The Applicant entered into a Short Assured Tenancy Agreement with the Respondents dated 28 November 2016.

- 9 The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 10 The tenancy continued by tacit relocation on a monthly basis.
- 11 On 17 November 2022 the Applicant delivered a Notice under section 33 of the Housing (Scotland) Act stating that the Applicant required the property back by 1 November 2022 and a Notice to Quit to the Respondents 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.
- 12 The Notice to Quit terminates the tenancy as at 1 November 2022 which is a valid ish date.
- 13 The relationship between the Applicants as joint owners of the property has irretrievably broken down.
- 14 The rent does not cover the Applicants' mortgage costs.
- 15 The Respondents require a larger property to accommodate themselves and their four children.
- 16 The Respondents have take advice from the local authority and are actively trying to source accommodation.
- 17 The Respondents do not wish to remain in the property.
- 18 It is reasonable to make the order sought by the Applicant.
- 19 The provisions of section 33 of the Housing (Scotland) Act 1988 have been met.

Reasons for Decision

- 20 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. The Respondents had confirmed that they were not opposing the application.
- 21 The Tribunal was satisfied that the Respondents 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.
- 22 The Tribunal accepted the situation outlined by the Applicants, namely that the tenancy was no longer sustainable. If he was unable to recover vacant possession of the property it was likely that the Applicants would continue to suffer financial loss. The Tribunal further noted that Respondents were actively trying to obtain Council housing and accepted that they wished to move. Whilst the Tribunal had some concerns about the Respondents' children, they were receiving support from the local authority and it was highly probable that the family would be entitled to accommodation.
- 23 It should be noted that this was also an application to which the Cost of Living (Tenant Protection) (Scotland) Act 2022 applies. As at the time of writing this prevents any action being taken to enforce the eviction order prior the earlier of (a) the day following the end of a period of 6 months beginning with the day on which this order was granted as specified above, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 which is the 30 September 2023. The Respondent would therefore have a lengthy period of time to move out of the property and into alternative accommodation. On that basis the Tribunal determined it would be reasonable to make the order.
- 24 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.

R O'Hare

Legal Member/Chair

21 July 2023

Date