



**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/23/1522

Property: 51 Millgate, Winchburgh EH52 6UA ("Property")

Parties:

**Ernest Di Ciacca and Kirsti Di Ciacca, The Shambles, Skivo, Livingston EH54
9AN ("Applicant")**

Linzi Pettigrew, 51 Millgate, Winchburgh EH52 6UA ("Respondent")

Tribunal Members:

Joan Devine (Legal Member)

Eileen Shand (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber)
("Tribunal") determined that an order for possession of the Property should be
made.**

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: Short Assured Tenancy Agreement dated 7 August 2010; AT5 dated 7 August 2010; Notice to Quit dated 10 February 2023 and Notice in terms of section 33 of the Housing (Scotland) Act 1988 ("1988 Act") dated 8 February 2023 both addressed to the Respondent; sheriff officer's certificate of service of the Notice to Quit and section 33 notice on 10 February 2023; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 11 May 2023. The Tribunal had sight of a sheriff officer's execution of service confirming service of the Application on 5 July 2023.

Case Management Discussion ("CMD")

A CMD took place on 10 August 2023. Both Parties were in attendance. Mrs Di Ciacca told the Tribunal that the Applicant intended to sell the Property. She said that Mr Di

Ciacca is a self employed painter. She said he has osteoarthritis and is having to retire earlier than planned. She said that they own a number of rental properties and their plan is to sell them as they become vacant to provide income in retirement.

The Respondent told the Tribunal that she does not oppose the grant of an order for eviction. She said that she is on a waiting list with West Lothian Council for alternative accommodation. She said that she is also on the waiting list with three housing associations. She said that she has been on the list for two or three years and that she has 900 points. She said that she lives in the Property with her partner and three children aged 15, 9 and 2. She said that her partner has epilepsy and her 9 year old daughter has autism. She said that her partner's condition is such that she has been told the family should not be accommodated in a house with stairs. She said that the local authority had told her that she may not be housed immediately on being evicted but may have to go into emergency accommodation. She said she had been told to present at the council office on the day of the eviction. She said she had not had any offers of alternative accommodation so far.

Mrs Di Ciacca told the Tribunal that the rent had always been maintained. She said that the Applicant had marketed the Property for 3 /4 months with the Respondent as sitting tenant but there had been no interest.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement dated 7 August 2010.
2. The Respondent had signed the form AT5 on 7 August 2010.
3. The tenancy was for the period 7 August 2010 to 7 February 2011 and month to month thereafter.
4. A Notice to Quit dated 10 February 2023 was served on the Respondent on 10 February 2023 stating that the tenancy would terminate on 7 May 2023.
5. A Notice in terms of Section 33 of the 1988 Act dated 8 February 2023 was served on the Respondent on 10 February 2023 stating that possession of the property was required on 7 May 2023.
6. The tenancy reached its *ish* on 7 May 2023 and is not continuing by tacit relocation.
7. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003.

Reasons for the Decision

The Tribunal determined to make an Order for possession of the Property in terms of Section 33 of the 1988 Act. The Tribunal noted that the tenancy had been properly created as a short assured tenancy. The Tribunal noted that a Section 33 Notice and Notice to Quit had been served on the Respondent giving two months' notice that the Applicant required possession of the Property. Having considered all of the circumstances, and in light of the Respondent stating that she did not oppose the grant of an order for eviction, the Tribunal determined that it was reasonable to issue an eviction order.

Decision

The Tribunal grants an Order for possession of the Property.

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.

Joan Devine

Legal Member

Date: 10 August 2023