



**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/23/1613

**Property: Hilhead of Barrack Farmhouse, Auchnagatt, Ellon AB41 8TR
("Property")**

Parties:

**Aberdeen Endowments Trust, 19 Albert Street, Aberdeen AB25 1QF
("Applicant")**

**Ledingham Chalmers LLP, Johnstone House, 52-54 Rose Street, Aberdeen AB10
1HA ("Applicant's Representative")**

**Sarah Wood, Hilhead of Barrack Farmhouse, Auchnagatt, Ellon AB41 8TR
("Respondent")**

**Civil Legal Assistance Office, 353 Union Street, Aberdeen AB11 6BT
("Respondent's Representative")**

Tribunal Members:

Joan Devine (Legal Member)

Gerard Darroch (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 subject to a delay in execution of the order for a period of 6 months.**

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 26 March and 9 April 2008; AT5 dated 20 and 26 March 2008; Notice to Quit and Notice in terms of section 33 of the Housing (Scotland) Act 1988 ("1988 Act") both dated 17 January 2023 both addressed to the Respondent; sheriff officer's certificate of service of the Notice to Quit and section 33 notice on 17 January 2023; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 18 May 2023.

Case Management Discussion (“CMD”)

A CMD took place on 24 August 2023. Rebecca Walker of the Applicant’s Representative and Annie Zdravkova of the Respondent’s Representative were in attendance.

Ms Walker told the Tribunal that the Applicant is a charity which provides education opportunities for under privileged children. In the past they have raised funds for that from a property portfolio. The advice they now have is to move into investments other than property. Ms Walker said that as result they are selling off properties which they own, many of which are farms and cottages in the Aberdeen area. She said the Applicant’s long term strategy is to dispose of their properties. She said the Respondent had been advised that was the position a year ago.

Ms Zdravkova told the Tribunal that the Respondent understands the Applicant’s position and as a result she does not oppose the Application but seeks a delay in enforcement. She noted that the Application is subject to the protection of the Cost of Living (Tenant Protection) (Scotland) Act 2022 but that its current expiry date is 30 September 2023. She said the Respondent needs a delay of at least 3 months. Ms Zdravkova told the Tribunal that the Respondent is 58 years old and has complex health needs which make it a challenge to find alternative accommodation. She said that the Respondent has physical and mental disabilities. She said she has been diagnosed with bipolar disorder and severe anxiety. She said the Respondent has mobility issues due to back pain. She has difficulty using her right arm. She said that the stress of a possible eviction was impacting the Respondent’s health.

Ms Zdravkova told the Tribunal that the Respondent has submitted a homelessness application. She said the Respondent’s anxiety is worse in busy areas so she would need to continue to live in a remote area. She said the Respondent is open to any alternative housing option such as a housing association or the private rented sector.

Ms Zdravkova said the Respondent struggles with stairs and needs a property on one level. She also needs a wetroom. She said that the Respondent’s ex-partner and her son attend the Property 3/4 times each week to assist with care needs. She said that aside from that there is no care package in place. She said that the Respondent intends to ask the council to assess her care needs. Such an assessment may take 12 weeks to be carried out. She said the Respondent is not in employment.

The Tribunal asked Ms Walker if there was any urgency in the Applicant’s wish to recover possession. She said that the Applicant is concerned that the Respondent had

been advised of the position a year ago. She did not see what benefit there would be from an additional delay. She said there are rent arrears of £2,514.44 which had accrued since March 2023. Ms Zdravkova said she understood that the rent arrears were due to a historic problem with payment of benefits. She said the Respondent is making payments towards the arrears.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement dated 26 March and 9 April 2008.
2. The Respondent had signed the form AT5 on 26 March 2008.
3. The tenancy was for the period 28 March 2008 to 27 March 2009 and month to month thereafter.
4. A Notice to Quit dated 17 January 2023 was served on the Respondent on 17 January 2023 stating that the tenancy would terminate on 27 March 2023.
5. A Notice in terms of Section 33 of the 1988 Act dated 17 January 2023 was served on the Respondent on 17 January 2023 stating that possession of the property was required on 27 March 2023.
6. The tenancy reached its *ish* on 27 March 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 and 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.

The Respondent did not oppose the grant of an order but sought a delay in enforcement. The Respondent has complex health needs. An assessment of her care needs is to be requested. It may take 12 weeks for that to take place. Such an assessment will be important in determining appropriate alternative accommodation.

Having considered all of the circumstances the Tribunal determined that it was reasonable to issue an eviction order but to delay execution of the order for a period of 6 months.

Decision

The Tribunal grants an Order for possession of the Property subject to a delay in execution of the order for a period of 6 months.

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.

Legal Member

Date : 24 August 2023