



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/23/2606

Property at 22 Dean Street, Galashiels, Selkirkshire, TD1 1LY (“the Property”)

Parties:

Mr John Riley, [REDACTED] London, SE3 0QT (“the Applicant”)

Mr Lukasz Moriss, Mrs Edyta Chydzinska Moriss, 22 Dean Street, Galashiels, Selkirkshire, TD1 1LY (“the Respondents”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Gerard Darroch (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 Respondent 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, two AT5 notices, Notice to Quit, Section 33 Notice, Royal Mail track and trace report 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 4 October 2023 at 2pm and that they were required to participate. Prior to the CMD, both parties lodged written submissions.

3. The CMD took place by telephone conference call on 4 October 2023. The Applicant participated. The Second Respondent participated and represented the first Respondent.

Case Management discussion

4. Mrs Moriss told the Tribunal that her main concern is getting more time to find alternative accommodation. She has applied to two housing associations but they cannot tell her how long she will have to wait for a property. When Mr Riley notified them that he wanted to sell the property, they thought they would be able to move out quite quickly. The Legal Member of the Tribunal advised the parties that, as the Cost of Living Act 2022 affects the application, there will be a delay in enforcement of the order for possession if it is granted. In response to questions from the Tribunal, Mrs Moriss said that she had no issues to raise in relation to the application paperwork, including the tenancy agreement and the Notices.
5. Mr Riley referred the Tribunal to his submissions. He said that his mortgage payments have drastically increased and the costs associated with renting out the property are far more than the rental income. This has not been increased since the tenancy started in 2014. Because of the 2022 Act, he cannot now increase the rent to an appropriate level. In response to questions from the Tribunal, Mr Riley said that he intends to sell the property. He lives permanently in London and does not intend to return to reside in the area. It is his only rental property and the only property that he owns, as he rents accommodation in London. Although he is not suffering financial hardship because of the increased costs associated with the property, the rent does not even cover his mortgage payments so he has to fund all of the other costs from his salary. He has recently checked and believes that similar properties in the area now generate a rental income of £725/£800.
6. Mrs Moriss told the Tribunal that she does not dispute that Mr Riley wants to sell the property or his reasons for doing this. She stated that she and her husband reside at the property with their children aged 12 and 14, who attend a secondary school in Galashiels. Both are in full time employment and they do not receive any state benefits. There are no health issues or disabilities affecting anyone in the house at the present time. In response to questions, Mrs Moriss said that they have been awarded the highest priority for housing with one of the housing associations and second highest for the other. However, as allocation of housing is dependent on turnover, no one can tell them when they will be offered a house. There are a small number of new properties being built. Allocations are largely based on how long you have been on the list. She has been told that they will be given temporary accommodation if they become homeless, but this could be anywhere. In the meantime, they have looked at other private lets. However, they would have to pay £700 or £800 for a smaller house, which they cannot afford. They have no family in the area but want to stay in Galashiels because of work and school.

7. The Tribunal asked the parties whether the Tribunal should consider a delay in enforcement, in terms of Rule 16A of the Tribunal Procedure Rules, over and above the 6 month delay imposed by the Cost of Living Act. Mr Riley said that he was opposed to this as he had served Notice on the Respondents in May 2023 and the delay is already costing him money. Mrs Moriss told the Tribunal that she hopes to be able to vacate the property within the next 6 months.

Findings in Fact

8. The Applicant is the owner and Landlord of the property.
9. The Respondents are the tenants of the property in terms of a short assured tenancy agreement.
10. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondents on 13 May 2023
11. The Respondents reside at the property with two children.
12. The Respondents have applied for alternative housing from two housing associations and have been given priority status on their waiting lists.
13. The Respondents are both in full time work. However, they are unable to afford to rent alternative property in the private sector
14. The Applicant resides permanently in London and intends to sell the property. He does not own any other properties.
15. The Applicant has not increased the rent since the start of the tenancy. As a result of the rent cap introduced by the Cost of Living Act 2022, he is unable to increase the rent to a level which will cover his mortgage and other costs associated with renting a property.

Reasons for Decision

16. The application was submitted with a short assured tenancy agreement and AT5 Notice. The initial term of the tenancy was 1 August 2014 to 1 February 2015, with a provision that it would continue thereafter on a month to month basis if not terminated.
17. 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.”

18. 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 an 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.
19. 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 13 May 2023. The Notice to Quit called upon the Respondents to vacate the property on 1 August 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 13 May 2023 and gave the Respondents more than two 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.
20. 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 Respondents, giving at least two months’ notice that the Applicant required possession of the property.
21. 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.
22. The Tribunal had regard to the following: -
 - (a) The tenancy started in 2014 and the Applicant has not increased the rent since the start from £450 per month, although similar properties in the area attract a

rental income of £700 or £800 per month.

- (b) The costs associated with the property currently exceed the rental income because of increased mortgage interest and tax changes.
- (c) The Applicant is unable to increase the rent to a level, which would cover the property costs due to the provisions of the Cost of Living Act 2022. However, if he decided to do so, when the temporary provisions expire, the Respondents would be unable to afford the increased rent as they are currently unable to seek alternative housing in the private sector for this reason.
- (d) The Applicant wishes to sell the property as he resides in London. He is not a commercial landlord and owns no other properties.
- (e) The Respondents are keen to remain in the area because they work and their children attend school locally. They are both in full time work. They have been given priority status on two housing association waiting lists and expect to be offered accommodation, although they do not know when this will be.

23. Although there is likely to be some disruption to the Respondent's family, the Tribunal is satisfied that it would be reasonable to grant the order for the reasons outlined in Paragraph 22 above. The Tribunal is also satisfied that, as there will be a six month delay in enforcement as a result of the Cost of Living Act 2022, a further delay in enforcement would not be appropriate.

24. 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

25. 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, Legal Member

4 October 2023

