



**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/21/1993

Re: Property at 93 WHITESIDE COURT, BATHGATE, EH48 2TP (“the Property”)

Parties:

**EXECUTORS OF THE LATE BRIAN DICKSON, C/O HARPER MACLEOD LLP, 45
GORDON STREET, GLASGOW, G1 3PE (“the Applicant”)**

**Mrs Wieslawa Krajewska, 93 WHITESIDE COURT, BATHGATE, EH48 2TP (“the
Respondent”)**

Tribunal Members:

Jan Todd (Legal Member) and Helen Barclay (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for repossession be granted.**

- **Background**

1. This was a case management discussion (CMD) to consider the application made by the Applicant dated 17th August 2021 for an order for repossession of the Property in terms of Rule 66 of the Tribunal Rules. The CMD took place by teleconference as a result of the current requirement for social distancing.
2. The Applicant are the executors in the estate of the late Mr Brian Dickson by virtue of confirmation in favour of the executors dated 28th May 2021. The estate in which they are confirmed includes the Property which was owned latterly by Mr Dickson who was the landlord in a Short Assured Tenancy with the Respondent who is the tenant.
3. The Applicants were not present on the teleconference themselves but were represented by Mr Stephen Nicholson of Harper Macleod solicitors. The Respondent attended on the call but was not represented. The Respondent

did however have an interpreter present to allow her to fully participate in the Tribunal.

4. The Applicant had lodged and the Tribunal had sight and considered the following documents:-
 - a. Application for repossession dated 17th August 2021
 - b. Copy Tenancy Agreement for the Property dated 1st May 2013
 - c. Copy AT5 Notice dated 1st May 2013
 - d. Notice to Quit dated 30th September 2020 giving notice to leave by 1st April 2021
 - e. S33 Notice dated 30th September 2020 giving notice to remove by 1st April 2021
 - f. Proof of e-mail delivery of the notices dated 30th September 2020
 - g. S11 notice to West Lothian Council dated 17th August 2021
 - h. Confirmation from Sheriff Principal at Livingston Sheriff court vesting the estate of the late Mr Brian Dickson in favour of the executors thereof dated 28th May 2021
5. The Tribunal had issued a direction to the Applicant for submissions regarding the service of the Notice to quit and S33 notice by e-mail and the Applicant had responded to that direction with submissions on why service by this method was a valid form of service.

The Discussion

6. The Legal Member explained the purpose and order of the proceedings today.
7. The Applicant's representative then explained that they are seeking an order for possession today. He advised that the appropriate notices have been served on the Respondent last year, by the Executors of the late owner and landlord of the Property. He confirmed that he had been advised that the Executors are seeking to sell the Property after they gain possession and under questioning he confirmed that there is more than one beneficiary. He also confirmed there had been no issues with the tenancy, that this action is purely required to allow the estate to be properly distributed.
8. Mr Krajewska advised that she had received the notices and confirmed she was content to leave but needs the order from the Tribunal to allow the Council to make her an offer of housing. She advised that she was sorry to learn that Mr Dickson had passed away and did not want to cause any problems for his family but just wanted assistance from the local authority. She also confirmed that she lived alone at the Property and in response to questions from the Tribunal indicated that she was confident she would not be homeless and that the local authority would be able to offer her accommodation.

Findings in Fact

9. The late Mr Brian Dickson and the Respondent entered into a short assured tenancy of the Property for a period of 6 months from 1st May 2013 to 1st November 2013 continuing on a month to month basis thereafter.

10. The Applicant are the executors in the estate of the late Mr Dickson and have confirmation granted in their favour authorising them to take possession of, administer and dispose of the estate in Scotland which includes the Property.
11. A Form AT5 was served on the Respondent who is the Tenant prior to the creation of the tenancy.
12. The Tenancy is a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988.
13. The Applicant has served a Notice to quit and S33 notice on the Respondent terminating the contractual tenancy and giving 6 months' notice that they required possession of the Property by 1st April 2021 being a termination date of the tenancy.
14. The Respondent who is the tenant has not vacated the property.
15. The Respondent wishes to be rehoused in social housing and is in regular contact with the council regarding this.
16. A s11 notice in terms of the Homelessness etc. (Scotland) Act 2003 was served on the Local Authority on 17th August 2021
17. The Tribunal finds it reasonable that an order for eviction be granted.

Reasons for Decision

18. The late Mr Dickson entered into a Short Assured Tenancy with the Respondent.
19. S33 of the Act says "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 for Scotland may make an order for possession of the house if it is satisfied-
 - a) That the short assured tenancy has reached its term
 - b) That tacit relocation is not operating
 - c) That no further contractual tenancy is for the time being in existence and
 - 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.

The period of notice required to be given under S33 (1) (d) above is six months, in accordance with the legislation as amended.

20. The Executors of the late Mr Dickson have obtained confirmation to the estate of the late Mr Dickson including the right and title to intromit with the Property; they have given adequate notice in terms of S33 above, and have terminated the contractual tenancy by serving a notice to quit.
21. There was a question raised prior to this CMD of the method of service of the Notice to Quit and s33 notice which the applicant had served by e-mail, but the Tribunal accepted the argument submitted by the Applicant's solicitor that e-mail service is not precluded by the terms of S54 of the 1988 Act, that evidence of service had been provided by the Respondent indicating in writing that she had received and accepted service of the Notices and that Schedule 4 part 1 of the Coronavirus (Scotland) Act 2020 which allows for electronic communications for any document of a type mentioned in sub-paragraph 4 includes "(c) any document that an enactment requires be given to a person in connection with or in order to initiate proceedings." In those

circumstances and given the Respondent indicated she had received the notices last year, and that she did not want to delay removing from the Property but was waiting for an order for eviction so that she could be offered accommodation from the local authority, the Tribunal accepted that notice had been validly served.

22. Since April 2020 and Section 2 and Schedule 1 of the Coronavirus (Scotland) Act 2020, there has been a change to the law on repossessions and before an order for possession is granted the Tribunal has to be satisfied that it is reasonable to grant the order.
23. The Tribunal considered carefully the submissions from the Applicant and Respondent and the written evidence it had before it. The Tribunal notes the Applicant wishes to sell the property to allow the proceeds to be distributed to the former landlord's beneficiaries. Mr Nicholson confirmed there was more than one beneficiary to this part of the estate and there for it was reasonable that the Property had to be sold to allow the proceeds to be distributed. The Respondent has confirmed she has not objection to this course of action and that she has been in contact with the council regarding being rehoused and is satisfied she will be rehoused once an order for eviction is made.
24. The Tribunal is able to make any order at a case management discussion as it can after a Hearing. The Respondent acknowledges the notices have been given. Given the S33 notice was served, given the Executors of the landlord's estate wishes to sell the Property to settle the beneficiaries claims and the council does have a duty to rehouse the Respondent then the Tribunal balancing the interests of both parties, finds it is reasonable to grant an order for repossession at this CMD and that a hearing is not required.

- **Decision**

An order for eviction was granted.

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.

Jan Todd

Legal Member/Chair

27th October 2021
Date