



**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/22/1514

Re: Property at 70 Oakburn Walk, Jamestown, G83 9NJ (“the Property”)

Parties:

**Mr Joseph Walker and Mrs Susan Anne Walker, both 34 Orwell Place,
Dunfermline KY12 7XP and Mr John McKay and Mrs Muriel McKay, both 145
Dragon Drive, Hamilton, Ontario, Canada L9B2CP (“the Applicants”)**

**Mr Stephen McMaster, 70 Oakburn Walk, Jamestown, G83 9NJ (“the
Respondent”)**

Tribunal Members:

George Clark (Legal Member) and Angus Lamont (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application should be determined without a
Hearing and made an Order for Possession of the Property.**

Background

By application, received by the Tribunal on 20 May 2022 and re-submitted in amended form on 12 August 2022, the Applicants sought an Order for Possession of the Property under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”), namely recovery of possession on termination of a Short Assured Tenancy.

The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Parties, commencing on 17 March 2017 and, if not terminated on 17 September 2017, continuing on a month to month basis thereafter. The Applicants also provided a copy of a Form AT5 Notice, acknowledged by the Respondent on 17 March 2017, a Notice given under Section 33 of the 1988 Act and a Notice to Quit, both dated 15 November 2021, with proof of delivery of both Notices. The Notice to Quit required the Respondent to vacate the Property by 17 May 2022 and the Section 33 Notice also required him to remove by that date.

On 28 November 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 19 December 2022. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 19 January 2023. The Applicant was represented by Ms Lauren Tighe of Jackson Boyd Lawyers, Glasgow. The Respondent was also present,

Ms Tighe told the Tribunal that the Applicants had purchased the Property while they were all working, with the intention that, when they retired, they would sell it to help fund their retirements and support their own families. They are all now retired. Mr and Mrs McKay had taken out a loan when they bought the Property and, with interest rates having increased, they were making a loss. She also understood that the Respondent had applied to the local authority to be rehoused, but would not be considered in the absence of an Order for Possession. Ms Tighe contended that, in these circumstances, it would be reasonable for the Tribunal to make an Order for Possession. That would be in the interest of both Parties, whereas refusing it would be prejudicial to both Parties.

The Respondent told the Tribunal that he applied some time ago to West Dunbartonshire Council and to local Housing Associations for an alternative property, but has been told that if he were to vacate the Property without an Order from the Tribunal, he would be regarded as having made himself intentionally homeless and would not be considered. He told the Tribunal that his 10-year-old daughter lives with him

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

Section 33 of the 1988 Act states that the Tribunal may make an Order for Possession of a house let on a Short Assured Tenancy if it is satisfied that the Short Assured Tenancy has reached its end, that tacit relocation is not operating, that no further contractual tenancy is for the time being in existence, that the landlord has given to the tenant notice stating that he requires possession of the house, and that it is reasonable to make the Order for Possession.

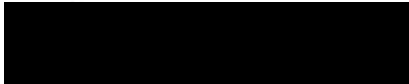
The Tribunal was satisfied that the tenancy had reached its end, that, by service of the Notice to Quit, tacit relocation was not operating, that there was no further contractual tenancy in existence between the Parties and that the Notice required under Section 33 of the 1988 Act had been properly given.

The Tribunal considered carefully all the evidence before it and, in particular, the fact that the Respondents' intention had always been to sell the Property when they were

all retired, as part of their retirement financial planning and the fact that the Respondent was unable to be rehoused without an Order for Possession. The Tribunal decided that, in all the circumstances, it was reasonable to make an Order for Possession. The Tribunal noted, however, that the Respondent has his young daughter staying with him, so decided that its Order should not become enforceable until 6 March 2023. This was accepted by Ms Tighe on behalf of the Applicants.

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/Chair

19 January 2023
Date