



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/22/3588

Re: Property at 17/6 Wardlaw Street, Edinburgh, EH11 1TN (“the Property”)

Parties:

Miss Clare Sullivan, 7 Stapeley Avenue, Edinburgh, EH7 6QR (“the Applicant”)

Mr Ricky Skeldon, 17/6 Wardlaw Street, Edinburgh, EH11 1TN (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Ann Moore (Ordinary Member)

Decision

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 29 September 2022, the Applicant 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 28 July 2015 and, if not brought to an end on 28 February 2016, continuing on a monthly basis thereafter until terminated by two months’ notice given by either party. The Respondent also provided copies of a letter of authority from the owner of the Property, dated 1 April 2013, a Form AT5 Notice, dated 28 July 2015, a Notice given under Section 33 of the 1988 Act and a Notice to Quit, both dated 25 November 2021, with proof of delivery of both Notices by sheriff officer. The Notice to Quit required the Respondent to vacate the Property by 28 May 2022 and the Section 33 Notice also required him to remove by that date.

On 29 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 20 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 morning of 7 February 2023. The Applicant was present and was also represented by Mr Jeffrey Livingstone of Landlord Agents Limited t/a Landlord Specialist Services Scotland, Edinburgh. The Respondent not present or represented.

The Applicant's representative told the Tribunal that they had been instructed in the present proceedings and that the owner of the Property was in the process of deciding whether to sue the Respondent for arrears of rent. It was, however, more important for her to recover possession of the Property, as they had made several unsuccessful attempts to engage with the Respondent to gain entry to inspect the Property because they suspected that it might have suffered damage or neglect by the Respondent. They had been able to ascertain from the outside that the entrance door is seriously damaged and the window sealant is hanging off. On one occasion, there had been music coming from the Property and someone was clearly there, but did not answer the door.

The Applicant told the Tribunal that she had acted as the owner's agent for a number of years. The owner was potentially looking to sell the Property. There were also arrears of rent, amounting to £3,500, as no rent had been paid since July 2022. The Respondent had paid the rent while he was in employment and for a period after he became unemployed, but he had then told the Applicant that he had missed an appointment at the Jobcentre and, as a result, his benefits payments had stopped. Since then, no rent had been paid and the Respondent had not been in communication with the Applicant. The Applicant understood that the Respondent lives alone and has no dependant family members living 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 remaining matter for the Tribunal to consider was, therefore, whether it would be reasonable to issue an Order for Possession.

The Tribunal considered carefully all the evidence before it, noting that there are significant rent arrears and that the Respondent has failed to engage with the Applicant or the Applicant's representatives for many months. He has not permitted property inspections to take place and, whilst the Tribunal could not speculate on whether his benefits may have been reinstated or whether he might now be in employment, he has not paid rent for 7 months and has not contacted the Applicant or her representatives to explain his current situation. He also failed to provide the Tribunal with any written representations as to whether it would be reasonable to make an Order for Possession and did not attend or arrange to be represented at the Case Management Discussion. The Tribunal decided on balance that, in all the circumstances, it was reasonable to make an Order for Possession.

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 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.



**George Clark
Legal Member/Chair**

**7 February 2023
Date**