



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 and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules)

Chamber Ref: FTS/HPC/EV/23/3494

Re: Property at 8 Victoria Street, Craigshill, Livingston, EH54 5BG (“the Property”)

Parties:

Mr Daryush Farahnak, 50 Dawson Avenue, Livingston, EH54 6AL (“the Applicant”)

Mr Cezary Herzog, Angelika Sztupek, 8 Victoria Street, Craigshill, Livingston, EH54 5BG (“the Respondent”)

Tribunal Members:

Andrew Cowan (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory requirements for eviction and recovery of possession has been established and that it is reasonable to grant the order sought.

Background

1. By application dated 29 September 2023, the Applicant sought an order under section 33 of the Housing (Scotland) Act 1988 (“the Act”) and in terms of rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

2. On 19th October 2023 the application was accepted by the tribunal and referred for determination by the tribunal.
3. A Case Management Discussion was set to take place on 22nd January 2024 and appropriate intimation of that hearing was given to all parties.

The Case Management Discussion

4. The Case Management Discussion (CMD) took place on 22nd January 2024. The applicant was not personally present but was represented by Mrs Antoinette Orr, of Martin & Co, Letting Agents for the applicant. Mr Cezary Herzog joined the CMD. He represented both himself and the second Respondent at the CMD.

Discussions at CMD

5. Due to a misunderstanding of how to connect to the CMD teleconference, Mr Herzog joined the CMD after it had started and after the Landlord's representative had answered questions from the Tribunal. The Tribunal informed Mr Herzog of the information given by the Landlord's representative and gave Mr Herzog an opportunity to respond to further questions from the Tribunal.
6. The tribunal asked various questions of both the landlord's representative and Mr Herzog regarding the application.
7. The Applicant's representative explained to the Tribunal that the Applicant wished to seek recovery of the Property as he wished to move into the Property as his own main residence. It was explained to the Tribunal that the Applicant had some serious health issues. At the time the Property had been leased to the Respondents the Applicant had moved to live with his sister who was able to care for the Applicant. The Applicant's sister now required to sell her own and could no longer accommodate the Applicant. The sale of the Applicant's sister's home was now imminent. Once that house was sold the Applicant would be homeless. The Applicant's representative confirmed that she had an email from the Applicant's sister which confirmed that she

required to sell her home. The Applicant had first served notice of his intention to recover the Property from the Respondents in July 2023 in anticipation of his requirement to move into the Property. The Applicant does not own or let any other property.

8. The Applicant's representative confirmed that the Respondents had been offered the opportunity of an alternative private let, but that the Respondents had declined to accept that offer.
9. The Applicant's representative confirmed that the Respondents continued to occupy the property, along with a child and that they continued to pay rent due in terms of the tenancy agreement between the parties.
10. Mr Herzog confirmed that he lived in the Property with his partner (and joint tenant) and their 19-month-old child. He had received the notices served by the Applicant in advance of this application and had been in contact with the local authority to seek alternative accommodation. Mr Herzog had also considered other private lets as alternative accommodation, but he had found these to be unaffordable. The Respondents had been offered alternative property by the Applicant's letting agents but Mr Herzog explained that the property offered was not suitable as it was some distance from his place of work and he could not afford the additional transport costs. Mr Herzog recognised that, if an order for eviction was granted, he, and his family, would require to remove from the Property. In these circumstances he understood that he may be given greater priority for housing by the Local Authority.

Findings in Fact

11. The Applicant and the Respondent, as respectively the landlord and the tenants, entered into a tenancy of the property by an agreement dated 28th September 2017.
12. The tenancy was a short assured tenancy in terms of the Act
13. On 10th July 2023, the applicant served upon the tenant a notice to quit and a notice in terms of section 33 (1) (d) of the Act. These notices were served on

the respondent by recorded delivery post. Said notices became effective on 28th September 2023.

14. The notices informed the tenant that the landlord wished to seek recovery of possession using the provisions of section 33 of the Act.

15. The notices were correctly drafted and gave appropriate periods of notice as required by law.

16. The basis for the order for possession was accordingly established.

Decision and reasons

17. When the 1988 Act was originally passed, the eviction process under section 33 was mandatory. The tribunal was required by law to grant the eviction order if satisfied that the required notices in terms of that section had been served upon the tenant.

18. Since 7 April 2020, in terms of changes initially made by the Coronavirus (Scotland) Act 2020 and then by the Coronavirus (Recovery and Reform) (Scotland) Act 2022, an eviction order on this basis can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order

19. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties

20. In this case the tribunal finds that it is reasonable to grant the order.

21. The landlord has indicated a desire to recover possession of the Property to allow him to move into the Property for his own needs. The Tribunal accept

that he will be homeless if he cannot recover possession of the Property as he requires to leave his current accommodation.

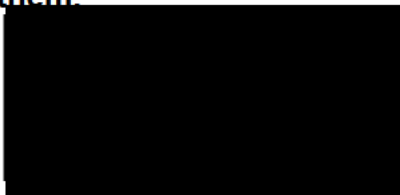
22. At the same time the Tribunal also accept that, if an order is granted, the Respondents will become homeless. In those circumstances the Respondents will require to find an alternative an affordable private let or to seek accommodation from the Local Authority. The Tribunal note that alternative accommodation was offered to the Respondents, but that this was declined as it was not wholly suitable for their needs.
23. The Tribunal note that when the tenancy agreement commenced the Applicant had an absolute right to terminate the tenancy having given appropriate statutory notice.
24. Whilst the Tribunal has sympathy for the position of the Respondents the Tribunal have determined that having taken into account all of the relevant circumstances the balance of reasonableness in this case weighs towards the Applicant.
25. The Tribunal also exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD

Decision

The order for eviction is 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.



22nd January 2024

Legal Member/Chair

Date

