



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/22/3630

Re: Property at 113/6 Rankin Drive, Edinburgh, EH9 3DH (“the Property”)

Parties:

Mr David Murray, 133 Craigleith Hill Avenue, Edinburgh, EH4 2NB (“the Applicant”)

Ms Maria Shaw, 113/6 Rankin Drive, Edinburgh, EH9 3DH (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Ahsan Khan (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, dated 30 September 2022, the Applicant sought an Order for Possession of the Property under Section 33 of the Housing (Scotland) Act 1988. The application was accompanied by copies of a Short Assured Tenancy Agreement between the Parties from 1 February 2006 to 1 August 2006 and if not terminated on the latter date, continuing on a month to month basis thereafter until terminated by two month’s written notice given by either Party to the other, a Section 33 Notice and Notice to Quit, both dated 13 June 2022 and both requiring the Respondent to vacate the Property by 1 September 2022, with evidence of service of both Notices on the Respondent. A copy of a Form AT5 Notice, dated 26 January 2006 was also provided. The tenancy is, therefore, a Short Assured Tenancy.

The Applicant also provided the Tribunal with an Affidavit dated 15 November 2022, in which he stated that he is retired, that 6 years ago he transferred the title of the Property into joint names with his wife and remortgaged it. They had used capital sums from their pensions to pay off the mortgage a year ago. They had intended to

sell the Property sooner, but were prevented from doing so by the COVID-19 pandemic. They require to sell to release capital for their retirement. The Applicant understood that the Respondent has been in touch with City of Edinburgh Council, but that the Council will not assist her until an Order for Possession is made. The Applicant stated that he and his wife have no intention of living in the Property and cannot obtain a Home Report until they have vacant possession. He asked the Tribunal to decide that it would be reasonable to make an Order for Possession.

On 2 February 2023, the Tribunal advised the Parties of the time and date of a Case Management Discussion and the Respondent was invited to make written representations by 23 February 2023. The Respondent did not provide any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion scheduled for 8 March 2023 was postponed at the request of the Respondent. Shortly before the rescheduled Case Management Discussion date, the Respondent advised the Tribunal that she did not oppose the Order for Possession in principle. She had been in contact with the Council but had been told there was nothing they could do until she has an eviction date. The Council's housing officer had, however, arranged for a removal firm to deliver packing boxes to her, but due to health difficulties, she was unable to pack or move boxes. She provided medical evidence in connection with her health issues.

The Case Management Discussion was held by means of a telephone conference call on the morning of 31 May 2023. The Applicant was represented by Mr Calvin Gordon of Thorntons Law LLP, Edinburgh. The Respondent was present and was assisted by Mr Stuart Campbell.

The Respondent told the Tribunal that she had no wish to contest the making of an Order for Possession. Due to her health issues, the Property is no longer suitable for her needs, but she is unable to pack for herself and, if she is unable to obtain further assistance from the Council, she will have to rely on the help of friends to help her pack and remove. She thought that if the enforcement date for the Order was 8 weeks rather than 30 days, that would provide her with the time that she might need, but she intended to move out as soon as the Council could provide assistance in rehousing her and she could make arrangements in relation to packing her belongings. Mr Campbell told the Tribunal that it was in the Respondent's interests, for her physical and mental health, to move as soon as possible, but that she was seeking adequate time to seek further help from the Council in relation to packing and removal or, if that was not forthcoming, to make arrangements for assistance from friends.

Mr Gordon said that his instructions were to seek an Order that would be enforceable after 30 days, but he appreciated the health issues of the Respondent and was content to leave the matter of the date to the discretion of the Tribunal.

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 noted that the Applicant required possession in order to sell to realise capital to fund his and his wife's retirement and also that the Respondent had indicated that she did not oppose the granting of an Order for Possession and that she required it in order to obtain housing assistance from the Council, but was seeking sufficient time to enable her to make suitable arrangements in relation to packing her belongings.

Having considered carefully all the evidence before it, the Tribunal was satisfied that it was reasonable to make an Order for Possession, but, taking into account the particular circumstances outlined by the Respondent, the Tribunal decided that the Order should not be enforceable for a period of 8 weeks from the date of the Tribunal's Decision.

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.

George Clark

Legal Member/Chair

31 May 2023
Date

