



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/23/0415

Re: Property at Flat 0/2, 7 McLennan Street, Glasgow, G42 9DH (“the Property”)

Parties:

Interpath Advisory as Permanent Trustee on sequestrated estate of William MacEwan, 130 St Vincent Street, Glasgow, G2 5HF (“the Applicant”)

Ms Emily McAllister, Flat 0/2, 7 McLennan Street, Glasgow, G42 9DH (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Mike Scott (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an order against the Respondent for possession of the Property under Section 33 of the Housing (Scotland) Act 1988.

This Hearing was a Case Management Discussion fixed in terms of Rule 17 of the Procedure Rules and concerned an Application for Recovery of Possession on termination of a short assured tenancy under Section 33 of the Housing (Scotland) Act 1988. The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved. The purpose of the hearing was explained. It was understood a final decision on the Application could also be made.

Attendance and Representation

The Applicant was represented by Andrew Richmond, Anderson Strathern LLP
George House, 50 George Square, Glasgow, G2 1EH

The Respondent was not present. She was served by Sheriff Officer on 5th May 2023.

Preliminary Matters

The Applicant's representative confirmed he acted for the insolvency practitioner who was trustee in succession over the late landlords estate. The insolvency practitioner has been in correspondence with the letting agent. The letting agents had correspondence with the Respondent directly in January 2023. She said she was looking for alternative local authority accommodation and was aware of the proceedings.

There were no other preliminary matters raised.

Case Management Discussion

The Applicant's representative explained in 2019 the insolvency practitioner who is the Applicant became trustee in succession over the landlords estate said that the Applicant sought an order for Repossession in terms of Section 33 of the Housing (Scotland) Act 1988. A Notice to Quit had been served and the Short Assured Tenancy had reached its end, there was no tacit relocation and no contractual tenancy. He submitted for that notice in terms of Section 33 of the Act had been given and the Applicant was therefore seeking in terms of Rule 66 of the procedure rules an order for repossession.

The Applicant's representative said that the context was that the Applicant requires to obtain vacant possession to sell the property in order to realise equity and to satisfy the creditors of the landlord, the late Mr McEwan. In March 2023 the consent of co-owner was obtained. The insolvency practitioner is intent on realising and there is creditor pressure.

The Applicant's representative said that the Respondent was paying the rent and the repairing obligations were continuing to be met. She is employed and has an adult son.

Facts Found and Reasons for Decision

- 1. The Tribunal was satisfied that a decision could be made in the absence of the Respondent and at a Case Management Discussion. There were no material matters upon which the Tribunal needed for information on.**
- 2. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property.**

3. The Tribunal was satisfied that the tenancy dated 14th March 2011 was in terms of Section 32(1) of the 1988 Act, a short assured tenancy for not less than 6 months and in relation to which a prescribed notice namely a valid AT5 had been served before creation of the short assured tenancy. The Respondent made no submission that the AT5 had not been served correctly at the outset of the tenancy.
4. In terms of Section 33 of the 1988 Act the Tribunal considered that the Short Assured Tenancy had reached its ish.
5. Further the Tribunal was satisfied that no tacit relocation was operating, no further contractual tenancy was in existence and a valid Notice to Quite had been served on the Respondent terminating the tenancy with the necessary notice given to the Respondent.
6. Accordingly, in terms of Section 33 of the 1988 Act the Tribunal considered it was appropriate to grant an order against the Respondent for possession of the Property.
7. The Tribunal noted the Local Authority under the 2016 had been notified.
8. On the evidence available to the Tribunal the Respondent had no dependents residing with her and the Applicant sought to recover the property as the insolvency practitioner sought to realise equity to satisfy creditors. The Tribunal found an Order was reasonable in terms of the Coronavirus (Scotland) Act 2020.
9. The Application is affected by the Cost of Living (Protection for Tenants) (Scotland) Act 2022.

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.

K Kirk

12/06/2023

Legal Member/Chair

Date

