



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/18/3238

Re: Property at 8 (2F1) Arden Street, Edinburgh, EH9 1BP (“the Property”)

Parties:

Mr Christopher Anderson, c/o Stuart and Stuart, 25 Rutland Street, Edinburgh, EH1 2RN (“the Applicant”)

Mr Louis Moir-Barnetson, Mrs Warangkhana Moir-Barnetson, 8 (2F1) Arden Street, Edinburgh, EH9 1BP (“the Respondent”)

Tribunal Members:

Colin Dunipace (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Possession should be made in terms of section 33 of the Housing (Scotland) Act 1988

Background

1. The Applicant in the present case had applied to the Tribunal for eviction/possession of the aforementioned property under section 30 of the Housing (Scotland) Act 1988 (the “Act”), in terms of Rule 66 of the Procedure Rules. The initial application was dated 29 March 2019 and stated: “Rule 66 termination of Short-Assured Tenancy – tenancy has come to an end”.
2. In support of the Application the following documents had been lodged, namely: Copies of the original Tenancy Agreement dated 17 September 2014 and 14 October 2014 and subsequent tenancy agreement dated 31 March 2016 and 8 April 2016; Copies of two forms AT5 dated 27 August 2018 and 17 September 2016; Copies of two Notices to Quit dated 24 July 2018 giving the tenant formal notice to quit the property by 1 October 2018; Copies of two section 33 Notices to the tenants advising them of the landlord’s requirement to possess the property on 1 October 2018; Copy of the Section 11 notice

addressed to Edinburgh City Council; and a copy of certificate of intimation by Christopher Andrew, Sheriff Officer dated 26 July 2018 confirming that the notices to quit and section 33 notices had been served upon the Respondents.

3. The matter previously called at a Case Management Discussion on 5 April 2019 at George House, 126 George Street, Edinburgh, EH2 4HH. The Applicant was represented at this Discussion, but was represented by Mr McMillan of Messrs Stuart & Stuart, solicitor. The Respondent was not present or represented, although an email had been sent by the Respondent on behalf of himself and the Co-Respondent indicating that they were content for the Discussion to proceed in their absence.
4. At that time the Tribunal considered the terms of section 66 of the Procedure Rules in relation to the documents which required to be lodged in support of an Application. The Tribunal also noted the requirements of section 33 of the Housing (Scotland) Act 1988, and noted that in terms of this provision that the following requirements must be met, namely:
 - (a) The Short Assured Tenancy has reached its ish
 - (b) That tacit relocation is not operating
 - (c) That no further contractual tenancy is in existence
 - (d) That the landlord has given notice to the Tenants stating that he requires possession of the property.
5. At the previous Discussion it was acknowledged that the ish date of the lease was 31 March 2017, and that the tenancy continued from month to month thereafter. Notices to Quit had been served together with section 33 Notices on the Respondents by Sheriff Officers on 26 July 2018, with both documents requiring the Respondents to vacate the property on 1 October 2018. It was agreed at the previous Case Management Discussion that the ish date of the lease had been 31 March 2017, and month to month thereafter. It was accordingly accepted therefore that the Notices to Quit had erroneously stated that the Respondents should vacate the property on 1 October 2018. The Case Management Discussion was accordingly adjourned unto 15 May 2019 to enable the Applicant's solicitor to address this issue and also to enable the solicitor to provide evidence that he section 11 Notice had been issued to Edinburgh City Council.
6. The matter called before me as a Case Management Discussion on 5 April 2019 at George House, 126 George Street, Edinburgh, EH2 4HH. The Applicant was represented at this Discussion, but was again represented by Mr McMillan of Messrs Stuart & Stuart, solicitor, and also by Mr Christopher Anderson, solicitor on behalf of the Trust. The Respondents were again not present or represented, but did send an email to the Tribunal on 14 May 2019 in the following terms:

"I write (to) inform I will not be attending the hearing tomorrow.

I wish to append the following statement to this case on behalf of my wife (Warangkhana Moir-Barnetson) and I and to be supplied to the hearing tomorrow:

We are both grateful to Christopher Anderson for the accommodation over the past few years and his patience and understanding of our current difficult situation. We are a family with three children ages 8-14. I am a taxi driver and my wife is currently not working but will commence social care employment imminently. Our children attend the local school James Gillespie's. We have been very happy and settled in our dwelling and are sad to be leaving. We do acknowledge the requirement for repossession and have made efforts to seek alternative private rental accommodation.

I consent to the decree despite the invalidity of the dates as determined at the previous hearing. However, I am happy that the matter be postponed for a couple of months till I have found suitable alternative accommodation."

7. At the outset of the Discussion Mr McMillan submitted an email from Edinburgh City Council dated 7 May 2019 which confirmed that the Council had received the section 11 Notice which had been submitted on 30 November 2018. Having considered this email I was satisfied that this Notice had been properly served upon the Respondents. Mr McMillan thereafter moved to address the issue of the erroneous date stated on the Notice to Quit. In his opening submissions, Mr McMillan made reference to the English authority of *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd*, [1997] Estates Gazette Law Reports 57, a case which dealt with the validity of a notice which had incorrectly stated an end date for a lease by one day. In that majority decision of the House of Lords it was determined that a reasonable recipient with knowledge of the leases would not have been perplexed by the minor error in the notices, and that the rule in this regard should not be regarded as too rigid, and that in relation to ascertaining the meaning of words, that they should be viewed in context and against the background in which the utterance had been made. Whilst conceding that this was an English authority, Mr McMillan suggested that it had applicability to Scotland and that it had, to an extent, been followed in the Scottish case of *Scrabster Harbour Trust v Mowlem PLC (t/a Mowlem Marine)* (2006) SLT 250, as mentioned in "Evictions in Scotland" by Adrian Stalker at pages 45 and 46. Having regard to the passage in question, this appeared to indicate that the foregoing authorities tended to suggest that the case of *Mannai* was applicable in Scotland and that despite the normal rule that precision is required in such Notices, that some discretion may be exercised, particularly where the notice is one day out, as in the present case.
8. Having considered the foregoing authorities, I was satisfied that in cases such as the present case where context and background suggested that the parties appear to have been in no doubt about the position in relation to the ending of the lease, and also having regard to the fact that the date specified was only one day out, I was prepared to excuse the error in the Notice to Quit and to allow the Application to continue.
9. In this regard I noted the previous Findings in Fact which were adopted in the present case *brevitatis causa*.

10. Thereafter having the submissions made on behalf of the parties I was satisfied that the Order should be granted, although I did note the undertaking provided by the solicitors to the effect that this Order would be enforced with discretion having regard to the background circumstances and the submissions of the parties.

Decision

Having regard to the foregoing the Order sought 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.

Leg



Date

16/5/19