



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/20/1032

Re: Property at 13 Belwood Crescent, Milton Bridge, Penicuik, Midlothian, EH26 0QL (“the Property”)

Parties:

Mr Fraser Russell, Mrs Myra Russell, 18 Mauricewood Park, Penicuik, Midlothian, EH26 0BP (“the Applicants”)

Mr Arran McDonald, Ms Emma Sheridan or McDonald, 60 Pentland Terrace, Penicuik, Midlothian, EH26 0EE; 13 Belwood Crescent, Milton Bridge, Penicuik, Midlothian, EH26 0QL (“the Respondents”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Second Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application against the First Respondent be dismissed and that an order against for possession of the Property under section 33 of the Housing (Scotland) Act 1988 be granted against the Second Respondent Emma Sheridan or McDonald. The order will be issued to the Applicants after expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents.

The order will include a power to Officers of Court to eject the Second Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicants or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 6 April 2020, the Applicants’ solicitor applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for

an order for recovery of possession of the property at 13 Belwood Crescent, Milton Bridge, Penicuik, EH26 0QL (“the Property”) in terms of Rule 66 the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The Application was accompanied by a signed copy of the Short Assured Tenancy, AT5s signed and dated 16 January 2014, Notices to Quit and Section 33 Notices dated 27 November 2019 together with Sheriff Officers’ Executions of Service dated 27 November 2019 and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 with accompanying email to Midlothian Council dated 6 April 2020.
3. On 29 April 2020, the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 10 July 2020, the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 12 August 2020 by way of a conference call. The Respondents were also advised that any written representations had to be lodged with the Tribunal by 31 July 2020 and that the Tribunal could do anything at the CMD which it may do anything at a hearing including making a decision on the application. Parties were also advised that if they did not take part in the CMD this would not stop a decision or order being made if the Tribunal considered that it had sufficient information before it to do so and that the procedure had been fair. This paperwork was served on the Respondents by Shaun Mooney, Sheriff Officer, Edinburgh on 14 July 2020 and the executions of service were received by the Tribunal administration.
5. The First Respondent lodged written representations with the Tribunal. The Second Respondent did not lodge any written representations.

Case Management Discussion

6. The Tribunal proceeded with the CMD on 12 August 2020 by way of teleconference call. The CMD proceeded with an application for payment of rent arrears after under case reference FTS/HPC/CV/20/1033. Ms Matheson from Bannatyne, Kirkwood France and Co, Solicitors represented the Applicant. Mr McDonald, the First Respondent appeared on his own behalf. He was supported by his father Stuart McDonald who also joined the call. There was no appearance by or on behalf of the Second Respondent.

7. Before proceeding with the Case Management Discussion the Tribunal checked with both parties that they had all the documents and were happy to proceed. Both parties confirmed they were ready to proceed and that they both understood the procedure and felt able to fully participate in the teleconference call.
8. Ms Matheson moved the Tribunal to grant an order for eviction under Section 33 of the Housing (Scotland) Act 1988 without the need for an evidential hearing. The Tribunal noted that with reference to the Notices to Quit and the Section 33 Notices served on 27 November 2019 on the Respondents that all the statutory requirements under Section 33 of the Housing (Scotland) Act 1988 had been met. There was a Short Assured tenancy between the parties which had reached its end and the Notices to Quit and the Notices under Section 33 of the Housing (Scotland) Act 1988 had been served by Sheriff Officers. Both notices gave more than two months' notice to the Respondents and requested the Respondents to vacate the Property by 15 February 2020, which tied up with the end date. There was no other contractual tenancy in existence.
9. Mr McDonald in response spoke to his full written submissions lodged with the Tribunal. He explained he had separated from the Second Respondent and had left the Property in August 2018. At that stage the Second Respondent's new partner had moved into the Property. The First Respondent had not formally terminated his interest in the tenancy agreement as he was trying to do the right thing by his children. He had not lived there since then. He submitted that Fraser Russell, the First Applicant was aware of that as he had had a reasonable relationship with him. However, he did not want an order for eviction to be made against him in circumstances where he had not lived in the Property for some time.

Findings in Fact

10. The Applicants are the heritable proprietors of the Property. The Respondents are the tenants of the Property.
11. The Applicants let the Property to the Respondents under a Short Assured Tenancy which started on 16 January 2014 with a termination date of 15 July 2014. The tenancy continued on a monthly basis thereafter.
12. The First Respondent left the Property in August 2018. He has not lived at the Property since then and had separated from the Second Respondent. The First Respondent did not terminate his interest in the tenancy agreement.

13. On 27 November 2019 by way of Sheriff Officers the Applicants served on the Respondents Notices to Quit terminating the tenancy on 15 February 2020. On 27 November 2019 by way of Sheriff Officers the Applicants served on the Respondents Notices in terms of Section 33 of the Housing (Scotland) Act 1988 indicating the Applicants intended to take possession of the Property on 15 February 2020.
14. There is no other contractual tenancy in existence between the parties.
15. The Second Respondent continues to live in the Property.
16. A Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 was served on Midlothian Council on 6 April 2020.

Reasons for Decision

17. The Tribunal considered the issues set out in the application. Further the Tribunal considered the written and oral submissions made on behalf of the Applicants and on behalf of the First Respondent. It appeared to the Tribunal that as the First Respondent was no longer in possession of the Property and had not resided there since August 2018 he had no statutory protection under Section 18(6) of the Housing (Scotland) Act 1988 after the contractual tenancy had been brought to an end on 15 February 2020. Accordingly the Tribunal was prepared to dismiss the application against the First Respondent.
18. In relation to the Second Respondent, the Tribunal concluded that the Applicants were entitled to seek repossession of the Property under Section 33 of the Housing (Scotland) Act 1988. There was a properly constituted Short Assured Tenancy. The Tribunal was satisfied that the statutory provisions of Section 33 of the Housing (Scotland) Act 1988 had been met which entitled the Applicants to repossess the Property namely that the Short Assured Tenancy had reached its term (termination date) on 15 February 2020; the Notice to Quit brought the contractual Short Assured Tenancy to an end on 15 February 2020; no further contractual tenancy was in existence; and the Applicants had given the Second Respondent at least 2 months' notice in terms of Section 33(1) (d) of the Housing (Scotland) Act 1988 stating that possession of the property was required on 15 February 2020.
19. The Tribunal granted an order for possession of the Property against the Second Respondent. As the First Respondent no longer retained possession of the Property, the Tribunal dismissed the application against him.

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.

Shirley Evans

16 August 2020

Legal Member

Date