



**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/22/3725

**Re: Property at 11 (3F1) Roseburn Place, Edinburgh, EH12 5NP (“the
Property”)**

Parties:

**Mrs Fiona Hightet and Mr Stewart Hightet, 3c Carswell Wynd, Cupar, KY14 7FB
 (“the Applicants”)**

**Mr Jon Flowers and Miss Lulu Flowers, both 11 (3F1) Roseburn Place,
Edinburgh, EH12 5NP; 11 (3F1) Roseburn Place, Edinburgh, EH12 5NP (“the
Respondents”)**

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, received by the Tribunal on 10 October 2022, the Applicants sought an Order for Possession of the Property under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”), namely recovery of possession on termination of a Short Assured Tenancy.

The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Parties, commencing on 19 December 2014 and, if not brought to an end on 19 June 2015, continuing on a monthly basis thereafter until terminated by either party. The Applicants also provided copies of a Notice given under Section 33 of the 1988 Act and a Notice to Quit, both dated 12 July 2022, with proof of delivery of both Notices by sheriff officer on 13 July 2022. The Notice to Quit required the Respondents to vacate the Property by 19 September 2022 and the Section 33 Notice also required them to remove by that date.

The Applicants' representatives also provided the Tribunal with copies of detailed Personal Statements from each of the Applicants. They stated that they are co-owners of the Property and have a mortgage over it as well as against their family home. The Respondents separated in July 2021 and it became apparent that they would need to sell the Property in order to complete the divorce and move on. They were now carrying two mortgages as well as paying rent on a third property in which Mr Highet lives, and they had not been in receipt of the full rent for the Property for many months. This situation was financially unsustainable.

Mr Highet, in his Statement, added that, during this period of time, the Respondent Mr Flowers has refused contact from the Applicants' property management company and access for routine inspections has been made extremely difficult, if not impossible. Mr Highet stressed that the delay in the Respondents' leaving has had a significant impact on his emotional well-being and mental health and that there is a continued financial impact which will be ongoing until the Property is sold and the divorce can be settled.

The Applicants also provided a copy of a letter from Thorntons, solicitors, Cupar, in which they confirmed that they are acting for the Applicant Mr Highet in respect of his matrimonial affairs and that as part of the division of the matrimonial assets, the Property will have to be sold.

On 30 January 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondents were invited to make written representations by 20 February 2023. The Respondents did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 7 March 2023. The Applicants were represented by Mr Raphael Barr of DJ Alexander, letting agents, Edinburgh. The Respondents were not present or represented.

The Applicant's representative told the Tribunal that the Respondents are still living in the Property. He referred to the Personal Statements by the Applicants, highlighted the stress that they are going through and asked the Tribunal to determine that it would be reasonable to make an Order for Possession.

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 considered carefully all the evidence before it. The Respondents had not provided the Tribunal with any written representations as to whether it would be reasonable to make an Order for Possession and had not attended or arranged to be represented at the Case Management Discussion. The Tribunal noted the very frank statements by the Respondents as to the reason they had to recover possession in order to sell the Property and the effect that their inability to do so was having on the family relationships and their mental health. On the basis of the information before it, the Tribunal was satisfied that it was reasonable to make an Order for Possession.

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

7 March 2023
Date