



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/21/3125

Re: Property at 1 Southhouse Close, Edinburgh, EH17 8FB (“the Property”)

Parties:

Ms Wei Wei Wang, 214 Abingdon Road, Oxford, OX1 4SP (“the Applicant”)

Mr Khaled Alrwailan and Mrs Sultanah Al Sharari, 1 Southhouse Close, Edinburgh, EH17 8FB (“the Respondents”)

Tribunal Members:

Shirley Evans (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondents for possession of the Property at 1 Southhouse Close, Edinburgh, EH17 8FB under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”) be granted. The order will be issued to the Applicant after the 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 Respondents and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in her name may enter thereon and peaceably possess and enjoy the same.

Background

- 1. By application dated 14 December 2021, the Applicant’s agent 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 1 Southhouse Close, Edinburgh, EH17 8FB (“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 copy of a Short Assured Tenancy between the parties signed and dated 29 December 2015, an AT5 signed and dated 24 December 2015, a Notice to Quit and a Section 33 Notice both dated 22 June 2020 together with a Sheriff Officers' Execution of Service dated 24 June 2020 and a Notice under Section 11 of the Homelessness etc. (Scotland) Act to Edinburgh City Council dated 14 December 2021.
3. On 1 February 2022 the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 24 February 2022, the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion under Rule 17 of the Regulations would proceed on 12 April 2022. The Respondents required to lodge written submissions by 17 March 2022. This paperwork was served on the Respondents by Dale G Barrett, Sheriff Officer, Edinburgh on 25 February 2022 and the Execution of Services were received by the Tribunal administration.

Case Management Discussion

5. The Tribunal proceeded with the Case Management Discussion on 12 April 2022 by way of teleconference. The Applicant was represented by Ms Ballantyne from Ewart Park Sales and Lettings. Ms Whannel from Ewart Park Sales and Lettings was also in attendance. There was no appearance by or on behalf of the Respondents despite the teleconference starting 10 minutes late to allow the Respondents plenty of time to join. The Tribunal was satisfied the Respondents had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD for both applications in their absence.
6. The Tribunal had before it a Short Assured Tenancy Agreement between the Applicant and the Respondents signed and dated 29 December 2015, an AT5 signed and dated 24 December 2015, a Notice to Quit and a Notice under Section 33 of the Housing (Scotland) Act 1988 both dated 22 June 2020, Sheriff Officers' Execution of Service dated 24 June 2020, an email from the Applicant dated 13 January 2022 and a Notice under Section 11 of the Homelessness etc. (Scotland) Act to Edinburgh City Council dated 10 June 2021. The Tribunal noted the terms of these documents.
7. Ms Ballantyne moved the Tribunal to grant an order for eviction under Section 33 of the Housing (Scotland) Act 1988. The Tribunal explained that they had to be satisfied that it was reasonable to evict. In response to questioning by the Tribunal she explained the reason there was over a year between when the Notice to Quit and Section 33 Notice became live in December 2020 and the application being lodged in December 2021 was that the Applicant wanted to give the Respondents time to find somewhere else to live. Ms Ballantyne was not aware that the Respondents had any children that lived in the

Property. The Property was not adapted. The Respondents were paying rent by bank transfer although the recent increase in rent had not been paid.

8. In response to further questioning by the Tribunal she explained the Applicant wanted to sell the Property due to financial reasons. Reference was made to the Applicant's email of 13 January 2022 which indicated her personal circumstances had changed and that she wished to sell the Property.
9. Ms Waddell clarified that the last contact from the Respondents had been in July 2021 when Mr Alrwailan had emailed them to advise they were travelling and they would contact the letting agents on their return. The letting agents were in contact with him by email. It was always Mr Alrwailan who was in contact with them on behalf of him and his wife, Mrs Sharari. In December 2021 he had given the letting agents consent to use the key to gain access to the Property. The inspection found mail dating back to August 2021, no food in the fridge, no heating, no clothes and no other evidence that there was anyone living in the Property. Enquiries with neighbours revealed that the Respondents had not been seen since the summer of 2021. The Property which had been let unfurnished, was empty. Ewart Park Sales and Letting had emailed Mr Alrwailan with a copy of the inspection report. They had asked him to send them evidence that he was still living in the Property. No response has been received.

Findings in Fact

10. The Applicant let the Property to the Respondents under a Short Assured Tenancy dated 29 December 2015 with a termination date of 29 June 2016. The AT5 was signed and dated 24 December 2015.
11. On 22 June 2020 the Applicant served on the Respondents Notices to Quit terminating the tenancy on 29 December 2020. The Applicant also served Notices in terms of Section 33 of the Housing (Scotland) Act 1988 indicating the Applicant intended to take possession of the Property on 29 December 2020. Both notices were served on the Respondents by Sheriff Officers on 24 June 2020.
12. The Respondents emailed the Applicant's letting agents in July 2021 to advise they were travelling. The Respondents have not returned to the Property. The Property is empty with no signs that the Respondents intend to return.
13. Following an inspection of the Property in December 2021 the Applicant's letting agent requested the Respondents provide evidence they intend to live in the Property. The Respondents have not been in any communication with the Applicant's agent. The Respondents are still paying some but not all the rent by way of bank transfer.

14. The Applicant wishes to sell the Property.

15. A Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 was served on Edinburgh City Council on 14 December 2021.

Reasons for Decision

16. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the written and oral submissions made on behalf of the Applicants. The Tribunal concluded that the Applicant was entitled to seek repossession of the Property under Section 33 of the Housing (Scotland) Act 1988. There was a properly constituted Short Assured Tenancy with the Respondents. The Tribunal was satisfied that the statutory provisions of Section 33 of the Housing (Scotland) Act 1988 had been met namely that the Short Assured Tenancy had reached its term (termination date); the Notice to Quit brought the contractual Short Assured Tenancy to an end on 29 December 2020; and that the Applicant had given the Respondents six months' notice in terms of Section 33(1) (d) of the Housing (Scotland) Act 1988 as amended by Schedule 1 paragraph 4 (3) of the Coronavirus (Scotland) Act 2020 stating that possession of the property was required on 29 December 2020.

17. The terms of Section 33 of the Housing (Scotland) Act 1988 would normally entitle the Applicant to a right of mandatory repossession of the Property. In terms of Schedule 1, paragraph 3 (4) of the Coronavirus (Scotland) Act 2020 the Applicant also has to satisfy the Tribunal that it is reasonable to evict. In determining whether it is reasonable to grant the order the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal was satisfied that the Applicant wanted to sell the Property for financial reasons. The Respondents were travelling and had been since summer 2021 when they were last seen at the Property. The inspection of the Property in December 2021 showed no signs that they intended to return to live there. The Respondents had been given more than enough opportunity to find somewhere else to live. Although the Respondents were still paying rent this was at a reduced level. It appeared to the Tribunal that the payment of rent was not enough to tip the balance in their favour as it appeared that the Respondents' other actions in travelling and clearing the Property of all furniture were more indicative that they did not intend to return to the Property. The balance of reasonableness in this case accordingly heavily weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.

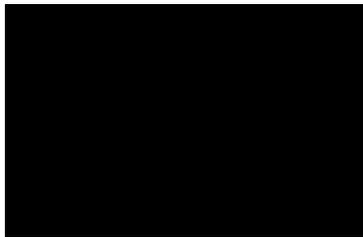
18. In the circumstances the Tribunal considered that in terms of Section 33 of the Housing (Scotland) Act 1988 it was reasonable to grant an eviction order.

Decision

19. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

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.



Legal Chair

12 April 2022

Date