



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/EV/23/2954

Re: Property at 32, 9 Salamander Court, Edinburgh, EH6 7JP (“the Property”)

Parties:

Mr Graeme McDonald and Mrs Margaret Brannif McDonald, 81 Loudoun Road, Newmilns, Ayrshire, KA16 9HQ (“the Applicant”)

Mr Christopher Mackie and Mr Carlo Di Lorenzo, 32, 9 Salamander Court, Edinburgh, EH6 7JP (“the Respondents”)

Tribunal Members:

Shirley Evans (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of Mr Di Lorenzo)

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 32, 9 Salamander Court, Edinburgh, EH6 7JP under Section 33 of the Housing (Scotland) Act 1988 be granted. The order will be issued to the Applicants 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 his goods, gear and whole belongings forth 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 28 August 2023, the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for recovery of possession 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 dated 10 October 2008, an AT5 dated 10 October 2008, a Notice to Quit and Section 33 Notice dated 4 May 2023 together with Sheriff Officers' execution of service dated 5 May 2023 and a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 and an email to Edinburgh City Council dated 28 August 2023.
3. On 9 October 2023 the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 9 November 2023, 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 8 January 2024. The Respondent required to lodge written submissions by 30 November 2023. This paperwork was served on the Respondents by Dale G Barrett, Sheriff Officer, Aberdeen on 10 November 2023 and the Executions of Service were received by the Tribunal administration.
5. Mr Mackie the Respondent made written representations on 29 November 2023. He acknowledged that the Applicants were within their rights to request that he vacate the property. He had been unable to find alternative accommodation. Events of the last eight months or so had been difficult for him. At times he felt suicidal. His mental health had significantly deteriorated. He complained about the letting agents' behaviour. He advised Mr Di Lorenzo no longer resides in the United Kingdom. He acknowledged that as a result of trying to cope with a significant increase in living costs there were arrears which he had tried to keep to a minimum.
6. On 19 December 2023, the Applicant's agents sent in factoring invoices and the rent statement.

Case Management Discussion

7. The Tribunal proceeded with the CMD on 8 January 2024 by way of teleconference. The Applicant was represented by Ms Sanderson from Rettie and Company. Mr Mackie represented himself. There was no appearance by or on behalf of Mr Di Lorenzo despite the teleconference starting 5 minutes late. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in her absence.
8. The Tribunal had before it the Short Assured tenancy dated 10 October 2008, an AT5 dated 10 October 2008, a Notice to Quit and Section 33 Notice dated 4 May 2023 together with Sheriff Officers' execution of service dated 5 May 2023, a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 with an email to Edinburgh City Council dated 28 August 2023, factoring invoices and a rent statement. The Tribunal noted the terms of these documents.

9. Ms Sanderson asked the Tribunal to grant an eviction order as the Applicants needed to sell the Property as the mortgage costs were increasing and they were losing money. The current rent was £865 but after their management fee was deducted the Applicants received £743.41. Their monthly mortgage was £717.53 and monthly factoring was between £65-£100. She further explained that there were rent arrears which stood at £1705 as per the rent statement lodged with the last payment on 20 November 2023 of £865. In response to questioning by the Tribunal she explained this was the only rental property the Applicants had.

10. In response, Mr Mackie explained that Mr Di Lorenzo had moved to Canada on 4 September 2023. Mr Mackie accepted he had received the Notice to Quit and the Section 33 Notice and acknowledged that the Applicants did have the right to take the Property back. He had no ground to oppose the application. However, he explained that he did not have alternative accommodation. If he had, he would have moved out. He complained that the letting agents' behaviour left a lot to be desired and that no repairs had been carried out at the Property. He had taken advice from East Lothian Council and from Shelter who had advised him to stay put. The Tribunal noted Mr Mackie had issues with his mental health. He advised the service of the Notices was a big contributing issue. He wanted the situation to come to an end. He was in full time employment and lived alone in the Property. He accepted he was in arrears but explained he was struggling to pay the full rent. He advised he did not have any disability.

Reasons for Decision

11. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the oral submissions made by Ms Sanderson and Mr Mackie at the CMD. 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 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, and that the Applicant had given the Respondent notice in terms of Section 33(1)(d) of the Housing (Scotland) Act 1988 stating that possession of the property was required by 30 June 2023.

12. The Tribunal accepted that Mr Di Lorenzo had left the Property in September 2023 after the Notice to Quit and the Section 33 Notice. On that basis he did not retain any statutory protection to remain in the Property under the Housing (Scotland) Act 1988.

13. 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 Applicants also have 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 gave weight to the Applicants' position that the mortgage on the Property, factoring fees and management fees exceeded the current rent. The Tribunal considered that Mr Mackie had not opposed the application. Whilst the Tribunal acknowledged that Mr Mackie was in poor mental health, it was clear from what he said he just wanted the situation to come to an end. Mr Mackie had sensibly sought help with his homelessness options from the East Lothian Council and Shelter. He wanted to move from the Property. The balance of reasonableness in this case weighted towards the Applicants. The Tribunal find it would be reasonable to grant the order.
14. In the circumstances the Tribunal considered that in terms of Section 33 of the Housing (Scotland) Act 1988 as amended it was reasonable to grant an eviction order.

Decision

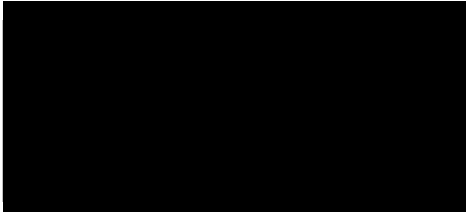
15. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.



Legal Member

8 January 2024

Date