



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/23/3432

Re: Property at 1F4, 4 Edina Street, Edinburgh, EH7 5PN (“the Property”)

Parties:

Flat Earth Properties Limited, 1 Park Road, Eskbank, Dalkeith, EH22 3DF (“the Applicant”)

Mr Tomas Vagasky, 1F4, 4 Edina Street, Edinburgh, EH7 5PN (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the applicant is granted and the order for recovery and possession should be granted in favour of the Applicant

Background

1. This is an application in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The Applicant is seeking an order for recovery of possession in terms of section 33 of the Act.
2. On 13th December 2023, all parties were written to with the date for the Case Management Discussion (“CMD”) of 7th February 2024 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 3rd January 2024.

3. On 18th December 2023, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent in the hands of his wife. This was evidenced by Certificate of Intimation dated 18th December 2023.
4. This case is conjoined with FTS/HPC/CV/23/3435.

Case Management Discussion

5. A CMD was held on 7th February 2024 at 2pm by teleconferencing. The Applicant was represented by Mr John MacAulay, solicitor, Ennova Law. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make any representations in advance of the CMD.
6. Mr MacAulay said that the Respondent is in arrears on his rent account. He has not made any payments since 2nd January 2023. The arrears currently stand at £12459. It is believed that the Respondent has been working but had lost his job. It is also believed that the Respondent found new employment in a food warehouse. The Applicant was informed on 11th April 2023 the Respondent has started a translation service. It is believed that the Respondent has not applied for Universal Credit at any point. Mr MacAulay said that there has been no contact by the Respondent since August 2023. At that point there had been another eviction application which was withdrawn as it had not met the legal requirements for an application.
7. Mr MacAulay said that the Applicant lives in the Property with his wife. There are no children in the Property.
8. Mr MacAulay told the Tribunal that the Applicant is a company. This was set up by Mr Ian Malcolm and Mrs Alison Malcolm in 1998. The company had a total of 9 properties. Very sadly in 2023 Mrs Malcolm died. Mr Malcolm's son is a tree surgeon in England and does not want to pursue this business. Mr Malcolm is now winding up the company to allow him to retire. Five of the properties have now been sold, one is in the process of being sold and two, including this one, are before the Tribunal.

Findings and reason for decision

9. The parties entered into a Short Assured Tenancy on 2nd September 2014 for a 6 months period. An AT5 was signed by both parties on the same date as the lease. The rent payments of £475 are due on the 2nd day of each month.
10. The Housing and Property Chamber received an Application on 28th September 2023.
11. The Respondent has not addressed the ongoing rent charge since 2nd January 2023. The arrears are £12459. There have been no payments to the arrears since that date either.

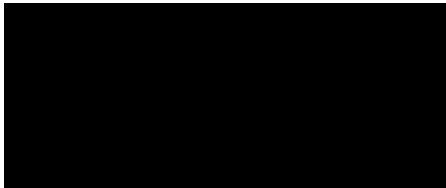
12. The Respondent has not contacted the Applicant or his agents since August 2023.
13. The Applicant now wishes to retire and has sold 5 out of 9 of his properties. He intends to sell the remaining properties, including this one, as the company is being wound up as the owner wishes to retire.
14. The Tribunal was satisfied that there were no other issues of reasonableness before them and that the notices had been served in an appropriate manner and that a Short Assured Tenancy had been entered into by the parties. Given this the Tribunal was satisfied all appropriate paperwork had been served the Order for repossession was granted.

Decision

15. The Applicant is entitled to an Order for recovery of 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.



7th February 2024

Legal Member/Chair

Date