



**Decision and 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/23/3136

Re: Property at 16 Guardwell Crescent, Edinburgh, EH17 7JA (“the Property”)

Parties:

Mr Andrew Clachers, Per Belvoir Lettings, 8 Bridge Lane, Perth, PH1 5JJ (“the Applicant”)

**Mr Piotr Andrzejewski, Mrs Agata Andrzejewska, 16 Guardwell Crescent,
Edinburgh, EH17 7JA (“the Respondents”)**

Tribunal Member:

Valerie Bremner (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First Tier Tribunal (Housing and Property Chamber) determined that a possession order be granted in respect of the property.

Background

1. This application for a possession order was first lodged with the Tribunal on 7th September 2023 and accepted by the Tribunal on 20th December 2023. A case management discussion was fixed for 22nd March 2024 at 2pm.
2. The case management discussion was attended by the Applicant and Miss Amy Lewis from Belvoir who act for him. Both the Respondents attended the discussion and Mrs Agata Andrzejewska spoke on behalf of both of them as Mr Andrzejewski’s English was limited.
3. The Tribunal had sight of the application, the tenancy agreement, a Form AT5, a Notice to Quit, a Notice in terms of Section 33 of the 1988 Act, proof of delivery of

these notices, a notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, an email delivering this notice and a statement regarding the Form AT5.

4. The Notice to Quit sent to each Respondent was dated 6th June 2023 and appeared to be in proper form and required the tenants to quit the property by 10th August 2023. The Notice in terms of Section 33 of the Housing (Scotland) Act 1988 was also sent to each Respondent and was also dated 6th June and required vacant possession by 10th August 2023. The required notice to the local authority in terms of Section 11 of the Homelessness etc (Scotland) Act had been e-mailed to the relevant council on 7th September 2023.
5. The parties had entered into a short assured tenancy at the property on 9th March 2009 and this continued until 10th September 2009. The tenancy set out that it would continue on a monthly basis after the term if not brought to an end by either party.
6. Mrs Andrzejewska advised she could understand most of what was being said. The Tribunal asked if she required someone to assist her and she said that she did not.
7. Mrs Andrzejewska indicated that she had no objection to the eviction going ahead and that she and Mr Andrzejewski simply needed what she called a "legal notice "to go to the council to be assisted with being re-housed. She was hoping for 4-6 weeks' notice to allow for a move. She did not take issue with any of the paperwork or that the tenancy was a short, assured tenancy.
8. The Applicant Mr Clachers indicated that he had returned to Scotland with his family last year and was required to purchase a flat with a mortgage and wished to have the property back so that he could sell and pay the mortgage on the apartment he had purchased. The Respondents had been good tenants, and it was his situation and that of his family that required the sale.
9. Mrs Andrzejewska said she understood that Mr Clachers needed the property back. She said that she and her husband had two adult children. They lived apart and their daughter lived with her and their son had stayed at the property. He had been a student and was looking for a job meantime.
10. The Tribunal was concerned that the position of the two Respondents which it had understood to be the same, was in fact different and Mr Andrzejewski was going to be directly affected by an eviction order, but Mrs Andrzejewska was not, as she had already moved out and was living elsewhere. Although she said that she spoke for both of the Respondents the tribunal was concerned that it required to be sure that he understood what was being asked and whether he wanted to object or take any issue with the application.
11. After discussion the Tribunal determined that it was appropriate to continue the matter to another case management discussion to allow a Direction to be sent to Mr Andrzejewski in Polish to allow him to confirm his position as regards the application. The Tribunal did not consider that the application and supporting

documents need be sent to him in the same way, as Mrs Andrzejewska had advised that he knew of the application and what it meant.

12. Both the Applicant Mr Clachers and the Respondent Mrs Andrzejewska did not wish to delay matters but the Tribunal indicated that it required to be sure that Mr Andrzejewski understood and was able to give his position since his was different from that of Mrs Andrzejewska. The Tribunal attempted to find an early date for a continued case management. The Tribunal determined to fix a case management discussion in due course and if there was no objection to the eviction after the Tribunal was able to ascertain Mr Andrzejewski's position and there was no objection to the application then the Tribunal indicated that it might be able to grant the order without another teleconference discussion. The Tribunal issued a Direction to Mr Andrzejewski to confirm whether he objected to the tribunal granting a possession order and if not whether this could be done administratively without the need for a hearing and also requiring the other parties to advise in the event that Mr Andrzejewska had no objection to the order being granted whether the matter could be dealt with without another hearing being fixed.
13. A case management discussion was fixed for 31st July 2024 at 10am. Both the Applicant and the Respondent Mrs Agata Andrejewksa advised the Tribunal that they had no objection to the matter being dealt with administratively.
14. On the 18th of April 2024 Mr Andrzejewski answered the Tribunal's Direction in Polish. The Tribunal administration arranged for the document to be translated for the parties and the Tribunal members. It confirmed that Mr Andrzejewski had no objection to an eviction order being made and that he had no objection to the Tribunal issuing the decision without a further teleconference.
15. The tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

16. The parties entered into a tenancy at the property from the 9th of March 2009 until the 10th of September 2009.
17. The tenancy stated that if neither party brought it to an end that it would continue beyond the term on a monthly basis.
18. This tenancy is a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
19. On 6th June 2023 agents on behalf of the Applicant sent to the Respondents notices in terms of section 33 of the Housing (Scotland) Act 1988 stating that the landlord required the property back by 10th August 2023.
20. On 6th June 2023 agents on behalf of the landlord sent to the Respondents Notices to Quit in the prescribed form which sought to terminate the tenancy with effect from 10th August 2023.

21. The Notice to Quit terminated the tenancy with effect from 20th August 2023 with effect from 10th August 2023 which is a valid end date for the tenancy.
22. Tacit relocation is not in operation in relation to this tenancy.
23. A notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 was sent to the City of Edinburgh council on 7th September 2023.
24. The Applicant returned to Scotland in 2023 with his family and was required to purchase an apartment with a mortgage for him and his family to live in.
25. The Applicant requires to sell the property to obtain funds to settle the mortgage on the apartment he required to purchase for his family in 2023.
26. The Respondents do not oppose a possession order being granted.
27. The Respondent Mrs Andrzejewska no longer lives at the property and lives elsewhere with the Respondents' adult daughter.
28. The Respondent Mr Andrzejewski lives at the property with the Respondents' adult son.
29. Both Respondents understand that the Applicant requires the property back in order to sell it.

Reasons for Decision

30. The Tribunal was satisfied that the Respondents had been served with valid Notices to Quit and notices in terms of section 33 of The Housing (Scotland) Act 1988. A notice in terms of the Homelessness etc (Scotland) Act 2003 had been sent to the relevant local authority. The dates of the Notice to Quit and s 33 notice coincided with an ish or end date for the tenancy. The tenancy had been properly brought to an end.
31. As far as reasonableness is concerned the Tribunal was satisfied that it was reasonable to grant an order given that the Respondents did not object and the landlord had a clear need to sell the property to finance his own living arrangements. The Second Respondent had already left the property and lived elsewhere with the couple's adult daughter. Only the First Respondent and the couple's adult son required to make arrangements to find somewhere else to stay.

Decision

32. The Tribunal determined that a possession order be granted in respect of the property.

Valerie Bremner

3rd June 2024

Legal Member

Date