



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/24/0499

Re: Property at 9 (1F2) Oxford Street, Edinburgh, EH8 9PH (“the Property”)

Parties:

Mrs Julie Williams, 98 Dalkeith Road, Edinburgh, EH16 5AF (“the Applicant”)

Mr Jonathan Flynn, 9 (1F2) Oxford Street, Edinburgh, EH8 9PH (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for possession of the property and the removal of the Respondent from the property.

Background

1. By application dated 31 January 2024 the Applicant’s representatives D J Alexander Lettings Ltd, Edinburgh, applied to the Tribunal for an order for possession of the property in terms of Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Applicant’s representatives submitted a copy of a Short Assured Tenancy Agreement, Form AT5, Notice to Quit and Section 33 Notice with proof of service and Section 11 Notice with proof of intimation and a rent statement in support of the application.
2. By Notice of Acceptance dated 4 March 2024 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 22 May 2024.

4. By email dated 26 June 2024 the Applicant's representatives submitted an updated rent statement to the Tribunal showing the rent due as at 19 June 2024 to be £7646.17.

The Case Management Discussion

5. A CMD was held by teleconference on 27 June 2024. The Applicant did not attend but was represented by Miss Leanne Young from the Applicant's representatives. The Respondent did not attend nor was he represented. The Tribunal being satisfied that the Respondent had been given proper intimation of the date and time of the CMD determined to proceed in his absence.
6. The Tribunal noted that the parties had commenced a Short Assured tenancy on 19 July 2010 that had endured until 20 January 2011 and continued from month to month thereafter. The Tribunal also noted that the Respondent had been served with a Notice to Quit and a Section 33 Notice by Sheriff Officers on 28 August 2023 giving the Respondent until 20 November 2023 to remove from the property. Miss Young advised the Tribunal that the Respondent had remained in the property. She confirmed that a property manager attended at the property every two weeks and although the Respondent would not answer the door, neighbours confirmed he was still living in the property.
7. The Tribunal also noted that the Applicant's representatives had sent a Section 11 Notice to Edinburgh City Council by email on 31 January 2024.
8. Miss Young explained that the Applicant wished to refurbish the property as it had been damaged following a leak from both the Respondent's property and the property above. Miss Young said that it was anticipated that the work would take about three months to complete and could not be undertaken while the Respondent remained in the property. Miss Young said that the floors in the kitchen and bathroom needed to be replaced and the ceiling had also come down and other refurbishment was required. Miss Young went on to say that her firm's property manager had tried to liaise with the Respondent and had offered him temporary accommodation while the refurbishment was taking place but the Respondent would not co-operate. She said that the Respondent had changed the locks at the property. As a result the Applicant had decided to serve the Notice to Quit and since then the Respondent had failed to pay any rent with the amount outstanding now amounting to £7646.17 and Miss Young asked the Tribunal to grant the order sought.

Findings in Fact

9. The parties entered into a Short Assured Tenancy that commenced on 19 July 2010 and endured until 20 January 2011 and from month to month thereafter.
10. The Respondent was served with a Notice to Quit and Section 33 Notice by Sheriff Officers on 28 August 2023.
11. Intimation of the proceedings was given to Edinburgh City Council by way of a Section 11 Notice by email on 31 January 2024.
12. The Respondent owes rent amounting to £7646.17 as at 18 June 2024.

13. The Applicant wishes to refurbish the property following damage caused by water leaks from the property above and from the property.
14. The refurbishment cannot be undertaken while the Respondent remains in the property.

Reasons for Decision

15. The Tribunal was satisfied from the written representations and documents submitted together with the oral submissions from Miss Young that the parties had entered into a Short Assured Tenancy and that a valid Notice to Quit and Section 33 Notice had been served on the Respondent. The Tribunal was also satisfied that proper intimation of the proceedings had been given to Edinburgh City Council. Before granting an order for possession the Tribunal had to be satisfied that it was reasonable in the circumstances to do so.
16. In reaching its decision the Tribunal took account of the fact that despite being given an opportunity to submit written representations and to attend the CMD the Respondent had chosen to do neither. The Tribunal also took account of the lack of co-operation exhibited by the Respondent to allow the Applicant's letting agent access to the property and to agree to temporarily move out of the property to allow the necessary refurbishment to take place. The Tribunal also took into account the substantial level of rent arrears that had arisen since the Respondent had been served with the Notice to Quit. Taking everything into account the Tribunal was satisfied that it was reasonable to grant the order sought.

Decision

17. The Tribunal being satisfied it had sufficient information before it to allow it to make a decision without the need for a hearing finds the Applicant entitled to an order for possession of the property and the removal of the Respondent from the property.

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.

Graham Harding

Legal Member/Chair

27 June 2024
Date