



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/24/0781

Re: Property at 13/4 Murrayburn Place, Edinburgh, EH14 2RR (“the Property”)

Parties:

Mr Colin Avinou and Mrs Julie Avinou, residing at 490 Lanark Road, Edinburgh, EH14 5DH (“the Applicants”)

Ms Alicja Brocka, 13/4 Murrayburn Place, Edinburgh, EH14 2RR (“the Respondent”)

Tribunal Members:

Andrew Cowan (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory requirements for eviction and recovery of possession have been established and that it is reasonable to grant the order sought.

Background

1. By application dated 8th February 2024, the Applicant sought an order for possession of the Property under section 33 of the Housing (Scotland) Act 1988 (“the Act”) and in terms of rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
2. The application was accompanied by a copy of a Short Assured tenancy which commenced on 17th December 2015, an AT5 dated 14th December 2015, a Notice to Quit and Section 33 Notice both dated 12th October 2023

and a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 served upon Edinburgh City Council by letter dated 15th February 2024.

3. On 13th March 2024 the application was accepted by the President of the First-tier Tribunal for Scotland Housing and Property Chamber and referred for determination by this tribunal.
4. A Case Management Discussion was arranged to take place on 21st June 2024 and appropriate intimation of that hearing was given to all parties.

The Case Management Discussion

5. The Case Management Discussion (CMD) took place on 21st June 2024. The hearing was held using teleconference facilities. The first Applicant joined the conference call and was represented on the conference call by his solicitor, Mr David Wilson.
6. The Respondent also joined the conference call. The Respondent was supported on the call by the services of a Polish interpreter, Ms Magda Healey.

Discussions at CMD

7. The tribunal asked various questions of all parties in relation to the Application.
8. Mr Wilson confirmed to the Tribunal that the Applicant continued to seek an order for recovery of possession of the Property.
9. The application explained that the tenancy between the parties is a short assured tenancy. The Applicant had served the Respondent with a notice to quit and a notice in terms of section 33 (1) (d) of the Act.
10. Mr. Wilson addressed the tribunal on the question as to whether it was reasonable to make an order for possession. He explained to the Tribunal that the Property is situated in a block of flats, most of which are owned by the local authority, Edinburgh city council. The block of flats in which the Property is situated requires substantial repairs to the roof. To enable necessary repairs works to be carried out to the roof of the block of flats the local authority have been purchasing those flats within the block which they do not currently own. The Applicants are currently arranging to sell the Property to the local authority. The local authority has already started work on the repairs to the block of flats. The local authority requires vacant possession of the Property to allow it to complete the necessary repair works to the block of flats. Mr Wilson and the first Applicant confirmed that they had been in discussion with the Respondent in

relation to these matters. From those discussions the Applicants understood that the Respondent was keen to move from the Property. It was understood that the Applicant would be entitled to be rehoused by the local authority, but that the local authority would not progress making any offer of alternative accommodation for the Respondent until the current tenancy between the parties had been legally terminated by order of the tribunal.

11. The Respondent confirmed that she had received a copy of the Application. She had taken advice from the local authority housing department in relation to the application. She did not wish to seek any further advice. The Respondent understood that, to grant an order for repossession, the tribunal had to be satisfied that it was reasonable to grant such an order in all the circumstances of the case and taking into account the individual circumstances of the parties.
12. The Respondent resides alone in the Property. The Tenant does not wish to remain in the Property. She explained that the Property needed to be repaired, and that the local authority had already started repair works within the block of flats in which the Property is situated. The Respondent understood that she could seek to argue that repossession of the Property was not reasonable, but she did not wish to do so as she did not wish to remain in the Property given the construction works which were now taking place at the Property. She confirmed that she had been advised by the local authority that they would offer her alternative accommodation if the tribunal granted an order which authorised her eviction from the Property. The Respondent wishes to leave the Property. She is packed and ready to move as soon as the local authority are able to offer her suitable alternative property.

Findings in Fact

13. The Applicants and the Respondent entered into a tenancy of the property by an agreement which commenced on 16th December 2015.
14. The tenancy is a short assured tenancy in terms of the Act
15. On 13th October 2023, the Applicants served upon the Respondent a notice to quit and a notice in terms of section 33 (1) (d) of the Act. These notices were served on the respondent by recorded delivery post. Said notices became effective on 16th December 2023.

16. The notices informed the tenant that the landlord wished to seek recovery of possession using the provisions of section 33 of the Act.
17. The notices were correctly drafted and gave appropriate periods of notice as required by law.
18. The basis for the order for possession was accordingly established.

Decision and reasons

19. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties.
20. In this case the tribunal finds that it is reasonable to grant the order.
21. The Applicants have confirmed the need to recover possession of the Property to allow them to sell the Property to the local authority. The local authority requires ownership of the Property to allow substantial repairs to the block of flats in which the Property is situated to be completed.
22. If an order is granted, the Respondent will become homeless. In those circumstances the Respondent will require to find an alternative an affordable private let or to seek accommodation from the Local Authority. The Respondent has been advised that she will be entitled to be rehoused by the local authority if an order is granted by the Tribunal which authorises her eviction from the Property.
23. The tribunal note that the Respondent does not wish to remain in the Property. She understands that the Property requires substantial repair and that she requires to remove from the Property to allow necessary repair works to be completed. She understands the consequences of an order for possession and does not wish to oppose the grant of such an order.
24. The overriding factor is that the Respondent does not wish to stay in the Property. In these circumstances the Tribunal finds that it is reasonable to grant an order for possession.

25. The Tribunal have determined that in the circumstances of the case it would be appropriate to allow the Respondent a longer period to remove from the Property to allow her the opportunity to further engage with the local authority and to seek alternative accommodation. Mr Wilson, on behalf of the Applicant, did not oppose the Tribunal's proposal to allow the Respondent a period of 2 months to remove from the Property. Accordingly, the Tribunal have determined that the order for possession should not be executed prior to 12 noon on 16th August 2024.

Decision

The order for possession is granted – not to be executed prior to 12 noon on 16th August 2024

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.

A. Cowan

21st June 2024

Legal Member/Chair

Date