



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/24/1434

Re: Property at 2a Wotherspoon Crescent, Armadale, EH48 2JD (“the Property”)

Parties:

Archdiocese of Saint Andrews and Edinburgh, (also known as the Trustees of the Archdiocese of St. Andrews and Edinburgh) having an office at Gillis Centre 100 Strathearn Road, Edinburgh, EH9 1BB (“the Applicant”)

Reginald Watson and Emilia Watson, both residing at 2a Wotherspoon Crescent, Armadale, EH48 2JD (“the Respondents”)

Tribunal Members:

Andrew Cowan (Legal Member) and Mary Lyden (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 27 March 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 29 April 2012, an AT5 notice dated 27 April 2012, a Notice to Quit and Section 33 Notice both dated 7 December 2023 and a

Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 served upon West Lothian Council by email dated 26 March 2024.

3. On 22 April 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 22 July 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 22 July 2024. The hearing was held using teleconference facilities. The Applicant was represented on the conference call their solicitor, Mr Jamie Miller.
6. The Respondents did not join the CMD call. The Tribunal were satisfied that the Application, and details of the CMD, had been intimated upon the Respondents by Sheriff Officers on 18th June 2024. The Respondents have not made any written representations to the Tribunal in advance of the CMD. The Tribunal was satisfied that the Respondents had been given reasonable notice of the date, time and place of the CMD and that the requirements of rule 24(1) of the First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Procedure Rules”) had been duly complied with. In the circumstances the Tribunal proceeded with the application in accordance with rule 29 of those Procedure Rules.

Discussions at CMD

7. The tribunal asked various questions of the Applicant’s solicitor in relation to the Application.
8. Mr Miller 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 Applicant wishes to sell the Subjects with vacant possession, which are adjoined to the Applicant’s Church. The Applicant already has vacant possession

of the Church that they own. The Subjects will be marketed as a single lot for sale. It would not be possible to sell the Church and the Subjects separately as the Church is to be knocked down as it is structurally unsafe, and the Subjects will sit in the cleared development site. The Applicant provided the Tribunal with a copy of a survey report which confirmed that there are significant structural defects in the church building.

11. Mr Wilson further confirmed to the Tribunal that the Respondents have confirmed to the Applicant that they are willing to vacate the Subjects. On 13 February 2024, the Respondents emailed the Applicant's letting agent Dunpark Property, to advise that West Lothian Council had informed the Respondent that they need a "first tier tribunal letter" from Dunpark before they could consider the Respondent for rehousing. Between 21 and 23 February 2024, the said Dunpark corresponded with West Lothian Council. The Council informed Dunpark that they could not progress sourcing alternative accommodation until an eviction order for repossession was granted this Tribunal.

Findings in Fact

12. The Applicants and the Respondent entered into a tenancy of the property by an agreement which commenced on 29 April 2012.

13. The tenancy is a short assured tenancy in terms of the Act

14. On 7 December 2023, the Applicant served upon the Respondents 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 29 February 2024.

15. The notices informed the Respondents that the Applicant wished to seek recovery of possession, using the provisions of section 33 of the Act.

16. The notices were correctly drafted and gave appropriate periods of notice as required by law.

17. The basis for the order for possession was accordingly established.

Decision and reasons

18. 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.

19. In this case the tribunal finds that it is reasonable to grant the order.

20. The Applicants have confirmed the need to recover possession of the Property to allow them to demolish the church which adjoins the Property and to sell the Property and the land upon which the church is built as one lot.

21. In reaching a decision on whether it was reasonable to grant the order sought the Tribunal took account of the fact that the Respondents, despite being given an opportunity to submit written representations to the Tribunal and to attend the CMD, had chosen to do neither. The Tribunal also took account of the fact that the Respondents had advised the Applicant that they were willing to vacate the Property.

22. The Tribunal exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD.

23. The Tribunal have determined that in the circumstances of the case it would be appropriate to allow the Respondent a period of two months to remove from the Property to allow them 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 22 September 2024.

Decision

24. The order for possession is granted – not to be executed prior to 12 noon on 22 September 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.

Andrew Cowan

Legal Member/Chair

22 July 2024

Date