



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/24/0809

Re: Property at 45 Whitson Road, Edinburgh, EH11 3BU (“the Property”)

Parties:

Mr Graham McRorie, 9 Nantwich Drive, Edinburgh, EH7 6DS (“the Applicant”)

Ms Stephanie Reynolds, 45 Whitson Road, Edinburgh, EH11 3BU (“the Respondent”)

Tribunal Members:

Rory Cowan (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted.

- Background

The Applicant seeks an Order for Possession relative to the Property under section 33 of the Housing (Scotland) Act 1988 (the 1988 Act).

Along with the Application, the Applicant had lodged:

- 1) The copy lease;
- 2) Notice to quit;
- 3) Section 33 notice;
- 4) Sheriff Officer execution of service: and
- 5) Rent statement.

- The Case Management Discussion

The case called for a Case Management Discussion (CMD) heard by way of conference call on 19 August 2024. At the CMD the Applicant was represented by a

Miss Harrison of Beveridge and Kellas Solicitors. The Respondent did not appear nor was she represented despite intimation of the Application and the CMD date on her by sheriff officers. Nonetheless, the Tribunal was satisfied they were aware of the date and the requirement to attend and therefore decided to proceed in her absence.

Miss Harrison moved the Tribunal to grant an order for possession relative to the Property. Whilst the basis under which possession as sought was section 33 of the 1988 Act, she confirmed that the reason possession was sought were the Respondent's substantial rent arrears which currently amounted to £26,477.16. Whilst no copy AT5 was available Miss Harrison stated that one had been served and that the tenancy agreement contained an acknowledgement that one had been served and that it had been served before the creation of the lease in question. She submitted that the tenancy was a short-assured tenancy as all the criteria for same had been met.

It was explained that the Property had been let to the Respondent because she was the former partner of a deceased relative of the Applicant. That the Applicant has a "mortgage" over the Property. That the Respondent was a middle-aged woman who lived alone and who had accrued substantial rent arrears. There were no health issues that the Applicant was aware of, and that the Applicant was not aware if the Respondent was in receipt of benefits or not. There had been a suggestion of an application for universal credit back in 2022 and the Applicant had been contacted by the local authority for a copy of the tenancy agreement as part of that process. The Applicant through his representatives had sought to engage with the council to establish what the position was and had, through his solicitors, contacted the council in February 2023 to enquire into whether the application had progressed or not. No response had been received to that contact. From then on, the local authority was copied in on communications to the Respondent regarding the arrears, but no contact was received from them or the Respondent. Miss Harrison stated that the Applicant's parents had attended the Property on 14 August 2024, and it seemed like the Respondent may have vacated the Property. There was no "sign of life" when they looked through the letter box and the downstairs neighbour had indicated to them that she had moved out. The suspicion being that this was shortly after the notification of the Application had been received. It was confirmed that no keys had been returned by the Respondent and it appeared that the Respondent may have changed the locks to the Property.

- Findings in Fact and Law

- 1) The Applicant and the Respondents entered into a tenancy agreement in respect of the Property.
- 2) The tenancy was a short-assured tenancy with an initial *ish* on 1 February 2017.
- 3) The tenancy thereafter continued under the operation of tacit relocation with *ish* dates on the first day of February and August of each year thereafter.
- 4) The Applicant served Notice to Quit and notice in terms of Section 33 of the Housing (Scotland) Act 1988 dated 22 November 2023 indicating that the Applicant required possession of the property on or before 1 February 2024.
- 5) That on 1 February 2024 the short-assured tenancy reached its *ish*.

- 6) That tacit relocation is not operating.
- 7) That no further contractual tenancy is in operation.
- 8) That the required notice under s33(1)(d) has been given.
- 9) That the Applicant has complied with the requirements of section 33.
- 10) That the Respondent is in rent arrears to the extent of £26,477.16 as at August 2024.
- 11) That the Respondent has been in consistent arrears since April 2019.
- 12) That the Respondent has made no payment of rent since January 2022.
- 13) That the Applicant has a "mortgage" over the Property.
- 14) That Respondent has no dependents and no known health issues.
- 15) That the Respondent has failed to respond to attempts to contact her regarding the arrears and her tenancy for the Property.

- Reasons for Decision

The requirements of section 33 had been met by the Applicant. The underlying tenancy was also a short-assured tenancy. There was no basis for an evidential hearing. As the requirements of section 33 of the 1988 Act had been complied with the issue for the Tribunal was to determine the question of whether it was reasonable to grant the order sought. Having heard from the Applicant and having considered the relevant circumstances put before them, the Tribunal was satisfied that it was reasonable to grant a Possession Order. Whilst the basis of possession was section 33 of the 1988 Act, the Tribunal was advised that the reason why possession was sought was due to the substantial rent arrears. It was also explained that the Applicant had a "mortgage" over the Property and needed to rent it to someone who would pay rent for it. He could not afford to subsidise the Respondent. The arrears were very substantial and amounted to £26,477.16 as at August of 2024. Indeed, no payment at all had been made since January 2022, a period of over 2 years. This was despite various attempts by the Applicant and his solicitors to engage with the Respondent about the arrears. The level of the arrears and the Respondent's apparent failure to engage weighed heavily in favour of the decision that it was reasonable to grant the order. In contrast, there appeared to be nothing particularly compelling in the Respondent's circumstances as put before the Tribunal to weigh against this. There were no dependents and no known health issues. The only factor would be that the period over which the Respondent had resided in the Property. Whilst not strictly relevant to considering whether it is reasonable to grant an order for possession under section 33, it also appeared that there was nothing to suggest that the arrears accrued as a result of failures or delays in the payment of relevant benefits. Whilst there was mention of a possible Universal Credit application in 2022, the Applicant was unable to say whether this had been granted or not.

- Decision

The Tribunal resolved to grant an Order for Possession on the basis it was reasonable to do so.

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.

Rory Cowan

Legal Member/Chair

Date

19 August 2024