



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 (“the 1988 Act”) and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/EV/24/2140

Re: Property at 279 2F2 Easter Road, Edinburgh, EH6 8LQ (“the Property”)

Parties:

Mr Andrew MacMichael, 67 Barnton Park Avenue, Edinburgh, EH4 6HD (“the Applicant”)

Mr Hugo Marcelo Lovey Cardozo, 279 2F2 Easter Road, Edinburgh, EH6 8LQ (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

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

Background

1. The application received on 9 May 2024 sought an eviction order under Rule 66 on the basis that the Short Assured Tenancy had been brought to an end by service of the relevant notices. Supporting documentation was submitted, including a copy of the tenancy agreement, AT5, Notice to Quit, Section 33 Notice and section 11 Notice to the local authority. The Short Assured Tenancy began on 23 December 2016.
2. Following initial procedure, the application was accepted by the Tribunal on 28 May 2024 and notified to the Respondent by Sheriff Officer on 20 August 2024. Representations were to be lodged by 9 September 2024.

3. On 26 August 2024, representations were received from the Respondent stating his difficulties in finding alternative accommodation to move to. He lives with his wife and two children, one of whom is 29 years old and the other in S6 at a secondary school in Leith, where they would like him to complete school. His older son has health problems. Until a few months ago, the Respondent and his son were employed in the same care home in Leith but it closed down and they lost their employment. They are trying to find work but the Respondent is presently in receipt of Universal Credit. This means that they cannot afford another private let and will be homeless if they are evicted. The Respondent also requested a Spanish translator to assist him at the CMD, which was arranged by the Tribunal Administration.
4. On 2 and 6 September 2024, the Applicant lodged some written representations, including copies of some Whatsapp messages between the parties and confirming that he would be able to lodge proof of his daughter and her family entering the UK from North America on 14 May 2024, if required.

Case Management Discussion

5. The Case Management Discussion (“CMD”) took place by telephone conference call on 19 September 2024 at 2pm and was attended by the Applicant, Mr Andrew McMichael who was supported by his wife, Mrs McMichael and by the Respondent, Mr Hugo Cardozo who, likewise, was supported by his wife, whom he advised had better English than him. A Spanish Translator, Miss Stefania Ricci, was in attendance to assist the Respondent and she translated the proceedings throughout.
6. Following introductions and introductory comments by the Legal Member, Mr Cardozo was asked to confirm his position in relation to the eviction application. He confirmed that he was not opposed to leaving but is awaiting alternative accommodation being available for he and his family to move into. Reference was made to his written representations and also the contents of the Whatsapp messages between himself and the Applicant and he confirmed that this was still the position. His application with Edinburgh City Council is on hold until the outcome of the Tribunal today. He also took some advice from CAB and they said the same. Mr Cardozo stated that he was very grateful to the Applicant for renting to him and understands his position. However, there is no easy solution as Mr Cardozo also needs to have stable accommodation for his family. He stated that his adult son has some mental health difficulties and that his younger son is still enrolled in school in Leith, where the Property is. He confirmed that he does not currently have enough money to afford another private let as rents are high and his only option is social housing. He is looking for more time to try and find accommodation.
7. Mr McMichael then explained the basis for the eviction application. He stated that his daughter and her family came back to the UK in May 2024 and that he had followed all the correct eviction procedures in advance of that. He explained that he had given more notice than was required and has already had to wait for around seven months since the process began. He explained that his

daughter and her family are having to live with he and his wife and that it is very inconvenient as there are two adults and two children under the age of three living with he and his wife and their house is not large. Mr McMichael stated that he had some sympathy for the Respondent but his own family was in a predicament and he needs the Property vacated so that they have somewhere to live.

8. It was explained to Mr McMichael that the Tribunal has a discretion, even if satisfied that the eviction ground was met and that it is reasonable to grant an order, to grant an extension on the timeframe for the eviction order being implemented. Mr McMichael was asked if he was agreeable to any extension, to which he responded that he would prefer the Tribunal to grant an order in the usual way, with no extension, given his own family circumstances. He confirmed that he could manage until the end of October but not really beyond that.
9. Mr Cardozo asked for clarification of the usual timescale for eviction and there was some discussion around that. He confirmed that he did not have anything further to add and just needed to know the next steps.
10. The Tribunal Members adjourned to discuss the position and, on re-convening advised that they were in agreement that an eviction order should be granted, subject to a slight extension on the usual timeframe for eviction until 31 October 2024. It was explained that the decision paperwork would follow shortly and that Mr Cardozo should provide this to the local authority as soon as possible so that they are aware of the eviction date and can hopefully then prioritise his application for housing and identify suitable accommodation for he and his family. Mrs McMichael asked about assistance with enforcement of the eviction order if the Respondent did not vacate by then. The Legal Member explained that the Tribunal does not assist, nor can advise on this and that the Applicant would require to seek his own advice, should that be necessary. However, it was explained to Mr Cordoza that if he is in a position to vacate earlier, he could do so and he was urged to keep in contact with the Applicant meantime to update him. Mr Cordoza confirmed that he would. Parties were thanked for their attendance and the CMD brought to a close.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Short Assured Tenancy which commenced on 23 December 2016.
3. The Applicant ended the contractual tenancy by serving on the Respondent a Notice to Quit and Section 33 Notice dated 29 January 2024, posted by Recorded Delivery/'signed for' service on 5 February 2024 and delivered by Royal Mail and signed for by the Respondent on 6 February 2024.

4. The notices specified the end of the notice period as 30 April 2024, an ish date in terms of the lease.
5. Both notices were in the correct form, provided sufficient notice and were served validly on the Respondent.
6. The Respondent has remained in possession of the Property following expiry of the notice period.
7. This application was lodged with the Tribunal on 9 May 2024, following expiry of the notice period.
8. The Respondent did not contest the application but sought an extension on the eviction date to allow his application for social housing to progress and for his family to secure alternative accommodation .
9. The Applicant did not wish the Tribunal to extend the eviction date beyond the end of October 2024 due to the time already elapsed and his own family circumstances.

Reasons for Decision

1. The Tribunal was satisfied that pre-action requirements including the service of the Notice to Quit and Section 33 Notice in terms of the 1988 Act had been properly and timeously carried out by the Applicant prior to the lodging of the Tribunal application.
2. Section 33(1) of the Act states that an order for possession shall be granted by the Tribunal if satisfied that the short assured tenancy has reached its finish; that tacit relocation is not operating; that the landlord has given to the tenant notice stating that he requires possession of the house; and that it is reasonable to make an order for possession. The Tribunal was satisfied that all requirements of Section 33(1) had been met.
3. As to reasonableness, the Tribunal considered the background to the application, the written representations lodged and the oral submissions of both parties at the CMD. The Tribunal was satisfied that the Applicant's reason for wishing to recover possession of the Property was that his family members wished to reside in the Property, having recently returned to the UK from living abroad. It was noted that his family members, including his daughter, her husband and his two young grandchildren are currently residing with the Applicant and his wife and that this is difficult due to the Applicant not having a large house. The Applicant had given more notice than required and communicated his reasons to the Respondent in advance of serving notice and had not anticipated the delay which had ensued. His family members returned to the UK in May 2024 and have accordingly been living with the Applicant and his wife for several months already. The parties appeared to be on good terms and each understood and sympathised with the other's position. The Tribunal

also took into account the personal, family, and current financial circumstances of the Respondent and noted, in particular, that he had been trying to resolve his housing situation since being made aware of the Applicant's intentions. The Respondent had been in contact with the local authority to seek re-housing in the social sector as an alternative private let is not currently financially affordable to him. He has made the local authority aware of his circumstances, sought advice and understands that his application is on hold pending the outcome of these Tribunal proceedings. The Respondent accepted that the ground for eviction was met and did not contest the eviction, but sought further time to allow his social housing application to progress. The Applicant was not agreeable to an extension beyond the end of October 2024 on the basis of his own current family circumstances and living arrangements.

4. In all of the circumstances, the Tribunal considered that it was reasonable to grant the eviction order sought, subject to a slight extension of the implementation date of the eviction order until 31 October 2024, to give a little additional time for suitable social housing to be identified for the Respondent and his family.

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.

Nicola Weir

Legal Member/Chair

19 September 2024
Date