



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/24/2569

Re: Property at 53 Gibraltar Gardens, Dalkeith, EH22 1EG (“the Property”)

Parties:

Slash Property Limited, Hillside, Alkerton, Banbury, Oxfordshire, OX15 6NL (“the Applicants”)

Mr Robert James Fraser Horne and Mr Mark Edward Horne, both 53 Gibraltar Gardens, Dalkeith, EH22 1EG (“the Respondents”)

Tribunal Members:

George Clark (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and made an Order for Possession of the Property.

Background

1. By application, dated 3 April 2024, the Applicants sought an Order for Possession of the Property under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”), namely recovery of possession on termination of a Short Assured Tenancy.
2. The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Parties, commencing on 27 January 2016, and copies of Notices under Section 33 of the 1988 Act and Notices to Quit, given to both Respondents, all dated 29 February 2024, and all requiring the Respondents to vacate the Property by 29 May 2024.
3. On 8 November 2024, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondents were invited to make written representations by 29 November 2024. The Respondents did not make any written representations to the Tribunal.

Case Management Discussion

4. A Case Management Discussion was held by means of a telephone conference call on the morning of 18 December 2024. The Applicants were represented by Mr Neil Reid of Neil Reid Property, Bonnyrigg. The Respondent, Mr Robert Horne was also present.
5. Mr Reid told the Tribunal that the Respondents had refused to pay rent at a level determined by the Tribunal, an appeal against that Decision having been refused by the Upper Tier Tribunal. They had paid no rent at all in the last two months, with no reason given. The relationship had broken down completely and the Applicants were left with no option but to seek an Order for Possession.
6. Mr Horne told the Tribunal that the Respondents were not opposing the application. He had already vacated the Property and the other Respondent, his brother, was in the course of doing so. Mr Reid replied that the Respondents had agreed to move out on 2 December, but had failed to do so, and had then stated that they hoped to vacate the Property by 14 December but had again failed to do so. Accordingly, his instructions were to proceed to seek an Order for Possession.

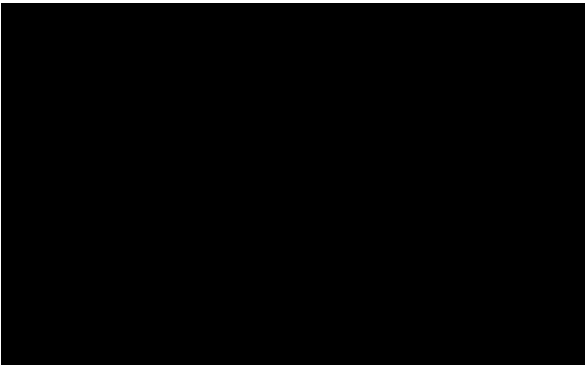
Reasons for Decision

7. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.
8. Section 33 of the 1988 Act states that the Tribunal may make an Order for Possession of a house let on a Short Assured Tenancy if it is satisfied that the Short Assured Tenancy has reached its end, that tacit relocation is not operating, that no further contractual tenancy is for the time being in existence, that the landlord has given to the tenant notice stating that he requires possession of the house, and that it is reasonable to make the Order for Possession.
9. The Tribunal was satisfied that the tenancy had reached its end, that, by service of the Notice to Quit, tacit relocation was not operating, that there was no further contractual tenancy in existence between the Parties and that the Notice required under Section 33 of the 1988 Act had been properly given. The remaining matter for the Tribunal to consider was, therefore, whether it would be reasonable to issue an Order for Possession.
10. In arriving at its decision as to whether it would be reasonable to make an Order for Possession, the Tribunal considered carefully all the evidence before it and noted in particular the issues regarding unpaid rent, the stated

intention to vacate the Property which had not then timeously happened and the fact that Mr Robert Horne had confirmed that the Respondents did not oppose the making of an Order for Possession under Section 33 of the 1988 Act. Accordingly, the Tribunal decided that it would be reasonable to make an Order for Possession of 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.



18 December 2024
Date