



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/20/0294

Re: Property at 20 3F2 Kings Road, Edinburgh, EH15 1DZ (“the Property”)

Parties:

Mr Bill Salmond, 89 Inchview Terrace, Edinburgh, EH7 6TT (“the Applicant”)

Ms Lorraine Bannerman, 20 3F2 Kings Road, Edinburgh, EH15 1DZ (“the Respondent”)

Tribunal Members:

George Clark (Legal 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

By application, received by the Tribunal on 28 January 2020, the Applicant sought an Order for Possession of the Property under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”).

The application was accompanied by copies of a Short Assured Tenancy Agreement between the Parties commencing on 9 May 2016 and, if not ended on 10 November 2016, continuing until terminated by either Party giving two months’ written notice to the other; a Form AT5 Notice dated 9 May 2016; a Notice to Quit; and a Form AT6 Notice given under Section 33 of the 1988 Act. Both the Notice to Quit and the Form AT6 Notice required the Respondent to vacate the Property by 10 August 2019 and the Applicant also provided evidence of service of these Notices by Sheriff Officer on 24 May 2019.

On 21 February 2020, the Tribunal advised the parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 13 March 2020.

On 3 March 2020, the Tribunal received written representations from Ms Nati Perez Fernandez, Social Worker with City of Edinburgh Council, including a copy of a Guardianship Order made under the Adults with Incapacity (Scotland) Act 2000, appointing the Chief Social Work Officer of the Council as Welfare Guardian in respect of the Respondent with effect from 6 February 2020. The Social Worker advised the tribunal that it was the professional view that health professionals and social work professionals were working closely to ensure the Respondent could move to a care home where she could be well and safe, and that the professional view was that, due to the complex needs of the Respondent and the current risks, it would be detrimental to her wellbeing and safety to be evicted before moving to a care home.

A Case Management Discussion scheduled for 26 March 2020 was postponed due to the COVID-19 lockdown restrictions.

Case Management Discussion

The rescheduled Case Management Discussion took place by telephone conference call on the morning of 13 July 2020. The Applicant did not participate and was not represented. The Respondent was represented by Ms Nati Perez Fernandez, who told the Tribunal that the Respondent had moved into a Care Home on 19 March 2020, but that it had not been possible as yet to remove her belongings from the Property, as the Council had had to apply to the Sheriff Court for a Financial Intervention Order, which, when granted, would give the Council the necessary powers to arrange for the Respondent's belongings to be removed. The application had been made and a decision was awaited.

Reasons for Decision

The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provide 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 and that it would determine the application without a Hearing.

Section 33 of the 1988 Act states that the Tribunal shall make an Order for Possession of a house let on a Short Assured Tenancy if it is satisfied that the tenancy has reached its end, that tacit relocation is not operating, that no further contractual tenancy is for the time being in existence and that the landlord has given the tenant notice stating that he requires possession of the house.

The Tribunal was satisfied from the documentation before it that the requirements of Section 33 of the 1988 Act had been met. Accordingly, the Tribunal was bound to make an Order for Possession of the Property. The Tribunal noted, however, that City of Edinburgh Council had applied for a Financial Intervention Order which would enable the Council to clear the Property of the Respondent's belongings and it is the hope of the Tribunal that the Applicant will accept that the process is under way and that he will take this into account before seeking to enforce the Order for Possession.

Decision

The Tribunal determined that the application should be decided without a Hearing and made 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.

George Clark

13 July 2020

Legal Member/Chair

Date