



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/21/1650

Re: Property at 4/2 Whitson Walk, Edinburgh, EH11 3BY (“the Property”)

Parties:

Mr David Greenan, Mrs Maria Asin, Miss Laia Greenan, 69(D) Dirleton Avenue, North Berwick, East Lothian, EH39 4QL (“the Applicant”)

Mr Ryszard Olszewski, Mrs Krystyna Olszewski, 4/2 Whitson Walk, Edinburgh, EH11 3BY (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Eileen Shand (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery and possession should be granted in favour of the Applicant

1. This case should be read in conjunction with FTS/HPC/CV/21/1654
2. This is an application in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The Applicant is seeking an order for recovery of possession in terms of section 33 of the Act.
3. On 3rd August 2021, all parties were written to with the date for the Case Management Discussion (“CMD”) of 6th September 2021 at 10am by teleconferencing. The letter also requested all written representations be submitted by 24th August 2021.

4. On 4th August 2021, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondents by personal service left in the hands of the First Named Respondent, Mr Ryszard Olszewski. This was evidenced by Certificate of Citation dated 4th August 2021.
5. A CMD was held on 6th September 2021 at 10am by teleconferencing. The Applicants were represented by Ms Nicola Caldwell, Paralegal, TC Young Solicitors. The Applicants did not attend. The Respondents were not present. The Tribunal was quickly made aware at the start of the hearing that the Respondents had attended the Glasgow Tribunal Centre for the CMD. They had not realised that the hearing was by telephone and that they had to dial in to participate. The Tribunal considered it in the interests of justice to continue the CMD to a further date to allow the Respondents to participate as it was clearly their intention that they wanted to do so. In case there are any issues around language the Tribunal arranged for an interpreter to join the call.
6. A CMD was held on 25th October 2021 at 2pm by teleconferencing. The Applicants were represented by Ms Kirsty Morrison, Solicitor, TC Young Solicitors. The Applicants did not attend. The Respondents were represented by Ms Linsey Soutter, Solicitor, Shelter Scotland. Both Respondents were present. Ms Beata Kubikowska was present as interpreter. Mr Coleman Kerr from Four Square was present to observe the CMD but took no part in the discussion. Issues were raised with the validity of the Notice to Quit given that only two of the three Applicants were on it. The CMD was adjourned to a hearing to allow evidence on this point and for consideration on the reasonableness issues for both applications. A direction was issued to both parties.

The Hearing

7. A hearing was held on 14th December 2021 at 10am by teleconferencing. The Applicants were represented by Ms Kirstie Donnelly, Solicitor, TC Young Solicitors. The Applicants did not attend. The Respondents were represented by Ms Linsey Soutter, Solicitor, Shelter Scotland. The First Named Respondent was present. Ms Agnieszka Musko was present as interpreter. Ms Donnelly confirmed her position in term of an email sent on 13th December 2021 to the Housing and Property Chamber that the Respondents were consenting to the Order being granted. This was with an undertaking from the Applicant not to enforce the Order before 14th February 2022 which will mean that there will not be an eviction before 28th February 2022.

Outcome

8. Order was granted by consent.

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.

Gabrielle Miller

14th December 2021

Legal Member/Chair

Date