

Housing and Property Chamber
First-tier Tribunal for Scotland



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/18/2012

Re: Property at Flat 1/1, 63 Calder Street, Glasgow, G42 7RR ("the Property")

Parties:

Mr David Johnstone, 103 Torey Drive, Girvan, KA26 OEU ("the Applicant")

Mr Robert Marsland, Flat 1/1, 63 Calder Street, Glasgow, G42 7RR ("the Respondent")

Tribunal Members:

Fiona Watson (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order is granted against the Respondent(s) for possession of the Property under section 33 of the Housing (Scotland) Act 1988.

- Background

An application was submitted by the Applicant under Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The application sought repossession of the Property currently occupied by the Respondent.

- The Case Management Discussion

A Case Management Discussion took place on 2 October 2018. The Applicant appeared personally, accompanied by his representative Jenny Modely. James Ashton, the stepfather of the Respondent appeared on the Respondent's behalf. A letter from the Respondent had been emailed to the Tribunal administration on 1 October 2018 confirming that the Respondent wished Mr Ashton to represent him.

The Applicant moved for the order for repossession to be granted. He advised that he had relocated from London to Scotland following the death of his mother. He wished to move back into the property. He had started the process of repossessing the property approximately 18 months previously, and a previous court action had been raised but subsequently dismissed due to an error in the Applicant's paperwork. The Applicant advised that he had experienced some troubles with communication with his former managing agents. He had tried to communicate with the Respondent directly and assist him with obtaining help to find alternative accommodation and assistance with his health issues, but this had been declined by the Respondent.

Mr Ashton advised that he was only made aware of the application on Friday 28 September 2018. He had not had sight of the paperwork served on his stepson. He advised that the Respondent suffers from health issues and this often results in him becoming very difficult to deal with. Mr Ashton sought further time to allow him to assist his stepson in finding alternative accommodation. No defence was put forward to the Tribunal against the order for repossession being sought.

The parties indicated that they would find it of benefit to discuss matters between themselves to attempt to come to some agreement regarding the way forward and accordingly the case management discussion was adjourned at 11.45am to allow discussion between the parties to take place.

The Case Management Discussion was re-convened at 12pm. The Tribunal was advised by the Applicant that it had been agreed between the parties that the Order for Possession should be granted but that enforcement would not take place for a period of 3 months. Mr Ashton confirmed his agreement to this.

- Findings in Fact

1. The parties had entered into a Short Assured Tenancy which commenced on 30 June 2004
2. The Applicant had served a Notice to Quit and Notice in terms of section 33 of the Housing (Scotland) Act 1988 on the Respondent
3. The said Notices required repossession of the property on or before 30 June 2018
4. The Respondent had failed to vacate the Property

- Reasons for Decision

The Tribunal was satisfied that the terms of section 33 of the Housing (Scotland) Act 1988 had been met. The Tribunal was satisfied that the tenancy had reached its end, that tacit relocation was not operating, that no further contractual tenancy had been entered into and that a notice in terms of s33 of the said Act had been served on the Respondent.

The Tribunal considered that it was appropriate under the circumstances, and considering the health difficulties faced by the Respondent, that it would be

appropriate to defer enforcement of the Order for Repossession for a period of 3 months from the date of the Case Management Discussion.

- Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent(s) for possession of the Property under section 33 of the Housing (Scotland) Act 1988, with said Order not to be executed prior to 12 noon on 2 January 2018

Right of Appeal

Interms 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.

Fiona Watson

Legal Member/Chair _____

_____ Date

2/10/18