

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/18/1476

Re: Property at 16 (2F4) Wardlaw Place, Gorgie, Edinburgh, EH11 1UE (“the Property”)

Parties

Michael Wheatley and Anne Wheatley, C/O Umega Lettings, 1 Marchmont Crescent, Edinburgh, EH9 1HN (“the Applicants”)

Graeme Thorpe, 16 (2F4) Wardlaw Place, Gorgie, Edinburgh, EH11 1UE (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland has decided to grant an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988. **The order will be issued to the Applicant after expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.**

The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 13 June 2018, the Applicant’s solicitor applied to the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for recovery of possession of the property at 16 (2F4) Wardlaw Place, Gorgie, Edinburgh, EH11 1UE (“the Property”) under Section 33 of the Housing (Scotland) Act 1988.

2. On 27 July 2018 the Tribunal gave notification of acceptance of the application to the Applicant and the Respondent under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
3. On 27 September 2018 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 12 October 2018. The Tribunal advised both parties on 28 September 2018 that a Case Management Discussion under Rule 17 of the Regulations would proceed on 15 October 2018. This paperwork was served on the Respondent by Andrew Fraser, Sheriff Officer, Glasgow on 28 September 2018 and the certificate of execution of service was received by the Tribunal administration.
4. The Respondent did not make any written representations by 12 October 2018.

Case Management Discussion

5. The Tribunal proceeded with the Case Management Discussion on 15 October 2018. The Applicant appeared and was represented by Mr Mathieson from TC Young, solicitors. The Respondent did not appear and was not represented.
6. The Tribunal had before it a Short Assured Tenancy Agreement between the Applicant and the Respondent signed and dated 8 September 2016, an AT5 signed and dated 8 September 2016, a Notice to Quit and a Notice under Section 33 of the Housing (Scotland) Act 1988 both dated 8 March 2018 with a Sheriff Officer’s Execution of Service dated 13 March 2018, and a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 addressed to Edinburgh City Council dated 13 June 2018.
7. Mr Mathieson moved the Tribunal to grant an order for eviction under Section 33 of the Housing (Scotland) Act 1988. The Short Assured Tenancy (“the tenancy”) commenced on 8 September 2016 and continued until 7 September 2017 and then on a monthly basis.
8. He referred the Tribunal to a Notice to Quit and a Notice under Section 33 of the Housing (Scotland) 1988 dated 8 March 2018 addressed to the Respondent to the effect that the Applicant intended to take repossession of the property on 7 June 2018. Both notices were served on the Respondent by Sheriff Officers on 13 March 2018. The Respondent had not vacated the

Property on 7 June 2018 and to the best of the letting agents' knowledge the Respondent was still in the Property.

9. He submitted that in terms of Section 33 of the Housing (Scotland) Act 1988 the Tribunal must grant an order for repossession. The tenancy had reached its end ('termination date'). Tacit relocation was not operating by service of the Notice to Quit. There was no other contractual tenancy in operation. The requisite notice under Section 33 of the Housing (Scotland) Act 1988 had been served.

Findings in Fact

1. The Applicants are the heritable proprietors of the Property at 16 (2F4) Wardlaw Place, Gorgie, Edinburgh, EH11 1UE. The Respondent is the tenant of the Property and continues to reside there having failed to vacate on 7 June 2018.
2. Anne Wheatley let the Property to the Respondent under a Short Assured Tenancy dated 8 September 2016 with a start date of 8 September 2016 until 7 September 2017. The tenancy continued on a monthly basis thereafter.
3. On 13 March 2018 by way of Sheriff Officers the Applicant served a Notice to Quit terminating the tenancy on 7 June 2018 and a Notice in terms of Section 33 of the Housing (Scotland) Act 1988 indicating the Applicant intended to take possession of the Property on 7 June 2018.
4. There was no other contractual tenancy in existence between the parties.
5. The Respondent remained in the Property.

Reasons for Decision

1. The Tribunal considered the issues set out in the application and noted that despite the Respondent being given notice of the Case Management Discussion, the Respondent had not lodged any written representations to dispute the application and was not present or represented at the Case Management Discussion. The Tribunal proceeded to hear and determine the application in the absence of the Respondent on being satisfied that the requirements of Rule 24(1) of the Regulations regarding the giving of notice of a hearing to the Respondent had been complied with.

2. The Tribunal concluded that the Applicants were entitled to seek repossession of the Property under Section 33 of the Housing (Scotland) Act 1988. There was a properly constituted Short Assured Tenancy with the Respondent. The Tribunal was satisfied that the statutory provisions of Section 33 of the Housing (Scotland) Act 1988 had been met which would entitle the Applicant to repossess the Property namely that-
 - i. the Short Assured Tenancy had reached its end (termination date) on 7 June 2018;
 - ii. the tenancy was not continuing on a monthly basis after 7 June 2018, the Notice to Quit having been validly served on 8 March 2018 which brought the contractual Short Assured Tenancy to an end on 7 June 2018;
 - iii. no further contractual tenancy was in existence; and
 - iv. that the Applicants had given the Respondent at least 2 months' notice in terms of Section 33(1)(d) of the Housing (Scotland) Act 1988 stating that possession of the property was required on 7 June 2018.

3. In terms of Section 33(1) of the Housing (Scotland) Act 1988 the Tribunal shall make an order for possession where it is satisfied that the statutory terms of Section 33 of the Housing (Scotland) Act 1988 have been met. Accordingly, the Tribunal found that the Applicants were entitled to an order for possession of the Property and accordingly granted the order sought.

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.

S Evans

Shirley Evans
Legal Member

15 October 2018