



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/22/3282

Re: Property at 58 Craigmount Brae, Edinburgh, EH12 8XE (“the Property”)

Parties:

Dr Ahmos Ghaly, Wychwood, 11 Fairway, Guildford, Surrey, GU1 2XQ (“the Applicant”)

Mr Paul Ewing, 58 Craigmount Brae, Edinburgh, EH12 8XE (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Helen Barclay (Ordinary Member)

Decision

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

Background

1. By application, dated 15 October 2022, the Applicant 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 9 March 2015 and, if not brought to an end on 9 September 2015, continuing on a monthly basis thereafter until terminated by one month’s notice given by the tenant or two months’ notice given by the landlord. The rent was £1,100 per month. The Applicant also supplied copies of a Notice given under Section 33 of the 1988 Act and a Notice to Quit, both dated 5 May 2022, and both requiring the Respondent to vacate the Property by 9 July 2022.

3. The Applicant also provided a copy of a letter from DMD Law LLP, solicitors, Edinburgh, confirming his instructions to them to sell the Property, but advising him against instructing a Home Report until vacant possession was obtained.
4. On 24 November 2022, the Applicant provided the Tribunal with a Rent Statement for 2022, showing arrears accrued over the year of £4,400.
5. On 19 December 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 30 January 2023.
6. On 2 February 2023, the Applicant provided the Tribunal with a copy Extract Decree from Edinburgh Sheriff Court, ordering the Respondent to pay to the Applicant the sum of £10,100 in rent arrears.
7. On 7 February 2023, the Applicant made written submissions to the Tribunal. In relation to the question of whether it would be reasonable to make an Order for Possession, he provided evidence of rent arrears and referred to his earlier submission of the letter from DMD Law LLP, solicitors, confirming he had instructed them to sell the Property.
8. A Case Management Discussion, scheduled for 16 February 2023 was postponed at the request of the Respondent's representatives, Community Help and Advice Initiative, Edinburgh ("CHAI") and the Tribunal issued Directions to the Respondent requiring him to provide a written response to the application in particular detailing which aspects of the Rent Arrears Statement submitted by the Applicant are in dispute. The Respondent did not comply with the Tribunal's Directions.
9. On 16 February 2023, the Applicant provided an updated Rent Statement for 2022 and 2023, showing arrears at 9 February 2023 of £5,780, and on 22 April 2023, he provided a copy of a further letter from DMD Law LLP, advising him that many of the house price indices had started reporting a fall in property prices.
10. On 27 April 2023, the Respondent's representatives, CHAI, made written submissions on his behalf. They stated that the household comprised the Respondent, his son, his daughter and the son of a deceased ex-partner, for whom he had become a kinship carer. The Respondent had given up work to become a carer and, with the support of welfare benefits and the social work department of the local authority, the family had made a home at the Property. After a time, the Applicant had dismissed his letting agents and taken on the management of the tenancy personally. From that point on, maintenance of the Property diminished. There had been no working cooker since November 2021, and the condition of the decking behind the Property had deteriorated and it was unsafe. They added that the smoke detectors had never been tested and the gas central heating boiler had not been serviced for some

years. The Respondent could not recall when he had last seen a Gas Safety Certificate.

11. At the end of 2021, the Respondent's daughter had left home, and the household finances had been reduced. It was contended that social workers had negotiated a reduction in rent of £50 per month. Rent arrears accrued as a result of changes in welfare benefit entitlement and, when the Respondent sought the assistance of social workers after he received the Section 33 Notice and the Notice to Quit, it was ascertained that the effect of the Benefits Cap negated any additional help he could have received. In relation to the Sheriff Court decree, the Respondent could not afford the court fee for lodging Notice of Intention to Defend and had been unable to obtain legal assistance funding or to find a solicitor willing to take on the case for a reopening note to recall the decree.
12. The Respondent recognised that he and his family cannot afford to remain in the Property, but they are stuck between not being able to afford an alternative private lease and not being considered yet in immediate need of local authority assistance.
13. On 26 April 2023, the Applicant provided the Tribunal with an updated Rent Statement showing arrears from 2019 to date of £12,650, a letter from DMD Law LLP of 24 April 2023, again advising him against selling the Property while tenanted, as lack of flexibility in viewings might put off potential purchasers and refurbishment work would be required to avoid problems arising in the Home Report, and a Memorandum of Sale in respect of the purchase of a property in Guildford for the Applicant's son.
14. On 1 May 2023, the Applicant responded to the Respondent's written submissions. He stated that the Respondent had refused access to him and his agents and had become hostile and intimidating. The Applicant produced evidence that the central heating boiler, which he had replaced three years ago, had been serviced and the Gas Safety Certificate obtained in February 2021 and that he had written to the Respondent on 16 March 2022, as the Respondent had refused access to enable the gas engineer to carry out the same work in 2022. The Applicant stated that these issues and the issues about repairs were not relevant to the application.

Case Management Discussion

15. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 4 May 2023. The Applicant was present. The Respondent was represented by Mr Andrew Wilson of CHAI.
16. The Tribunal Chair advised the Parties that, as the Section 33 Notice and the Notice to Quit had been validly served, the only matter for consideration was whether it would be reasonable to make an Order for Possession. The fact that there are arrears of rent was relevant to the question of reasonableness,

but would not be determinative. The Tribunal could not take into account any issues arising from the Sheriff Court Decree, or matters relating to repairs to the Property.

17. Mr Wilson told the Tribunal that there are now three people living in the Property, namely the Respondent, his adult son and the son of a deceased ex-partner, who is now 18. The Respondent did not dispute that the Applicant intends to sell and needs to sell the Property.
18. The Applicant told the Tribunal that his requirement to sell the Property is urgent, to enable him to meet his obligation to assist his son in a purchase of a property in Guildford.

Reasons for Decision

19. 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.
20. 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.
21. 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.
22. The Tribunal considered carefully all the evidence before it and noted in particular that the Applicant had stated that he requires to sell the Property, the fact that the solicitors instructed by him had advised him against marketing it while it remained tenanted, that he was committed to assisting his son with a purchase in Guildford, that there are significant rent arrears and the Respondent accepts that he and his family cannot afford to remain in the Property, and that the occupants of the Property are now all adults. On the basis of the information before it, the Tribunal was satisfied that it was reasonable to make an Order for Possession.
23. The application is not affected by The Cost of Living (Tenant Protection) (Scotland) Act 2022, as the Notice to Quit and Section Notices were served and the application received by the Tribunal prior to 28 October 2022, but in

determining the date before which the Order cannot be enforced, the Tribunal was mindful that a public holiday on 8 May 2023 might result in its Decision not being sent to the Parties before 9 May 2023.

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.



Mr George Clark

Legal Member/Chair

4 May 2023

Date