



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/22/4110

Re: Property at 25 Brisbane Street, Livingston, EH54 5ET (“the Property”)

Parties:

Mr Khrum Syed, 23 Morris Crescent, Motherwell, ML1 5NH (“the Applicant”)

Ms Kimberly Russell and Jamie Duffy, both 25 Brisbane Street, Livingston, EH54 5ET (“the Respondents”)

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

By application, received by the Tribunal on 11 November 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.

The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Parties, commencing on 4 March 2013 and, if not brought to an end on 3 October 2013, continuing on a monthly basis thereafter. The Tenancy Agreement was signed on 14 March 2013. The Applicant also provided the Tribunal with a copy of a Form AT5 Notice, dated 14 March 2013. This was later than the start date of the tenancy, but in the Tenancy Agreement itself, the Respondents acknowledged that they had been served with a Form AT5 Notice before the creation of the tenancy. The Applicant also provided a copy of a Form AT6 Notice given under Section 33 of the 1988 Act and a Notice to Quit, both dated 26 July 2022, with proof of delivery of both

Notices by sheriff officer. The Notice to Quit required the Respondents to vacate the Property by 3 October 2022 and the Section 33 Notice also required them to remove by that date.

On 25 January 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondents were invited to make written representations by 15 February 2023. The Respondents did not make any written representations to the Tribunal.

First Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 6 March 2023. The Applicant was represented by Mr Joseph McHugh of Austin Lafferty Limited, solicitors, East Kilbride. The Respondents were not present or represented.

The Applicant's representative told the Tribunal that he had no instructions relating to reasonability of making an Order for Possession beyond the fact that the appropriate Notices had been served and the Respondents remained in the Property after they expired. He asked the Tribunal to continue the case to a later date, to enable him to seek further instructions.

The Tribunal decided to allow the Applicant's representative's request for a continuation to a later date, to enable him to seek specific instructions as to why the Applicant considered it reasonable for the Tribunal to issue an Order for Possession. Such a continuation would also provide the Respondents with an opportunity to address the Tribunal on the question of reasonability. Accordingly, the Tribunal continued the case to a further Case Management Discussion.

Second Case Management Discussion

The continued Case Management Discussion was held by means of a telephone conference call on the afternoon of 31 May 2023. The Applicant was again represented by Mr Joseph McHugh. The Respondents were both present.

The Applicant's representative told the Tribunal that the Applicant needed to sell the Property to raise funds. He was having great difficulty in re-mortgaging it due to its non-traditional construction and could not afford to carry out alterations to adapt it to the needs of Ms Russell.

Ms Russell told the Tribunal (and Mr Duffy confirmed) that Mr Duffy no longer lived in the Property but that it was the home of Ms Duffy and their two teenage daughters, both of whom are still at school. She regarded the Property very much as her home. She suffered from a disability which rendered her more or less housebound and accepted that the Applicant had been unable to re-mortgage the Property. She had been in touch with the local authority who had advised her not to leave without an Order for Possession. She accepted that the best solution for her would be to have a flat that was fully adapted for her needs.

Mr McHugh asked the Tribunal to find that it was reasonable to make an Order for Possession, as the Applicant could not afford to make adaptations to the Property and

requires to sell and it appeared that it would be in the best interests of the Respondent to move to a property better suited to her needs.

Reasons for Decision

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.

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.

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.

The Tribunal accepted that the Property had been the Respondent's home for many years and that she had a strong emotional attachment to it, but it appeared to the Tribunal that, as it was unlikely that any adaptations would be made by the Applicant to suit her disability needs, her long-term interests were better served by being rehoused by the local authority in a property that was suitably adapted. This was a position that she accepted was the best option.

Having taken into account all the information before it, the Tribunal decided that it would be reasonable to make an Order for Possession.

As the application post-dates 28 October 2022, it is affected by the provisions of Schedule 2, paragraph 1 of the Cost of Living (Tenant Protection (Scotland) Act 2022.

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.

Legal Member/Chair

31 May 2023
Date