



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/22/0279

Re: Property at 1/5 West Pilton Green, Edinburgh, EH4 4ER (“the Property”)

Parties:

Mr Cameron Veitch, Strawberry Wood, East Saltoun, EH34 5DY (“the Applicant”)

Mr Silas Philip Sherringham, 1/5 West Pilton Green, Edinburgh, EH4 4ER (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 1/5 West Pilton Green, Edinburgh, EH4 4ER under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”) be granted. The order will be issued to the Applicant after the 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 furth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 1 February 2022, 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 1/5 West Pilton Green, Edinburgh, EH4 4ER (“the Property”) in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a copy of a Short Assured Tenancy between the parties commencing on 19 May 2017, an AT5 dated 15 May 2017, a Notice to Quit and a Section 33 Notice dated 26 July 2021 together with a Sheriff Officers' Execution of Service dated 27 July 2021 and a Notice under Section 11 of the Homelessness etc. (Scotland) Act to Edinburgh City Council with email dated 1 February 2022.
3. On 17 February 2022 the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 9 March 2022, the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion under Rule 17 of the Regulations would proceed on 29 April 2022. The Respondent required to lodge written submissions by 30 March 2022. This paperwork was served on the Respondent by Dale G Barrett, Sheriff Officer, Edinburgh on 10 March 2022 and the Execution of Service was received by the Tribunal administration.

Case Management Discussion

5. The Tribunal proceeded with the Case Management Discussion on 29 April 2022 by way of teleconference. The Applicant was represented by David Alexander, Solicitor from Gilston Gray, solicitors. The Respondent was represented by Shaun Cassidy from the Living Rent Tenants Union. Mr Sherringham the Respondent was also in attendance.
6. The Tribunal had before it a Short Assured Tenancy Agreement between the Applicant, the Respondent and Charles MacNeill commencing on 19 May 2017, an AT5 dated 15 May 2017, a Notice to Quit and a Notice under Section 33 of the Housing (Scotland) Act 1988 dated 26 July 2021, Sheriff Officers' Execution of Service dated 27 July 2021, and a Notice under Section 11 of the Homelessness etc. (Scotland) Act to Edinburgh City Council with accompanying email dated 1 February 2022. The Tribunal noted the terms of these documents.
7. Mr Alexander moved the Tribunal to grant an order for eviction under Section 33 of the Housing (Scotland) Act 1988 with reference to the Notice to Quit and the Notice under Section 33 lodged.
8. Mr Cassidy explained Mr Sherringham suffered from depression and anxiety and suffered from physical pain in his neck and shoulder. The Respondent's flat mate Charles MacNeill had left which had placed the Respondent under additional financial pressure and complicated matters further, making it difficult to find a deposit in order to move on to another property. Mr Sherringham was receiving support from Edinburgh City Council, but this was slow. He was also supported by the Edinburgh Coalition Against Poverty ("ECAP"). The Respondent did not want to live with the threat of being

homeless and wanted to try to secure more secure accommodation. Mr Cassidy submitted if the eviction were to proceed the Respondent being a vulnerable adult would be left street homeless. In all the circumstances he submitted that it was not reasonable to evict.

9. On that last point the Tribunal questioned whether the Respondent would be street homeless with reference to the local authority's duty to carry out a homelessness assessment and provide temporary accommodation in terms of the Housing (Scotland) Act 1987. Mr Cassidy accepted the local authority would have such a duty to assess the Respondent as being threatened with homelessness.
10. Reverting back to Mr Alexander, the Tribunal explained they had to be satisfied that it was reasonable to evict due to the amendment of Section 33 of the Housing (Scotland) Act 1988 made by the Coronavirus (Scotland) Act 2020. Mr Alexander submitted it was reasonable to evict. His understanding was that the local authority were under an obligation to assess the Respondent. It was likely he would be assessed as unintentionally homeless and that the granting of an Order may move things along. He explained that his firm had received an email from ECAP in November 2021. The local authority were well aware of the Respondent and were already in the process of carrying out a homelessness assessment. The Applicant was thinking of selling the Property. If the Order were not granted the Applicant would be prejudiced from dealing with his investment asset and would continue in a state of limbo with regard to the Property. In all the circumstances it was reasonable to evict.
11. The Tribunal questioned Mr Cassidy whether since November 2021 there had been any contact from Edinburgh City Council. Mr Cassidy explained that support for the Respondent and contact was still ongoing and that the Respondent was aged 49.

Findings In Fact

12. The Applicant let the Property to the Respondent and Charles MacNeill under a Short Assured Tenancy commencing on 19 May 2015 with a termination date of 19 November 2015. Mr McNeill had left the Property and was no longer a tenant.
13. On 27 July 2021 the Applicant served on the Respondent a Notice to Quit dated 26 July 2021 terminating the tenancy on 19 November 2021. The Applicant also served a Notice in terms of Section 33 of the Housing (Scotland) Act 1988 indicating the Applicant intended to take possession of the Property on 28 January 2022. Both notices were served on the Respondent by Sheriff Officers on 27 July 2021.

14. The Applicant is considering selling the Property which is an investment property.
15. The Respondent is a single man aged 49. He is struggling financially. He suffers from anxiety and depression and physical pain in his neck and shoulders. He is receiving ongoing support from Edinburgh City Council and the Edinburgh Coalition against Poverty.
16. A Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 was served on Edinburgh City Council on 1 February 2022.

Reasons for Decision

17. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the written and oral submissions made on behalf of the Applicant by Mr Alexander and the oral submissions made by Mr Cassidy. The Tribunal concluded that the Applicant was 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 namely that the Short Assured Tenancy had reached its termination date; the Notice to Quit brought the contractual Short Assured Tenancy to an end on 19 November 2021; and that the Applicant had given the Respondent six months' notice in terms of Section 33(1) (d) of the Housing (Scotland) Act 1988 as amended by Schedule 1 paragraph 4 (3) of the Coronavirus (Scotland) Act 2020 stating that possession of the property was required on 28 January 2022.
18. The terms of Section 33 of the Housing (Scotland) Act 1988 would normally entitle the Applicant to a right of mandatory repossession of the Property. In terms of Schedule 1, paragraph 3 (4) of the Coronavirus (Scotland) Act 2020 the Applicant also has to satisfy the Tribunal that it is reasonable to evict. In determining whether it is reasonable to grant the order the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal empathised with the Respondent who had physical and mental health issues. However the Respondent was supported by both Edinburgh City Council and ECAP and was engaging with them on an ongoing basis. It appeared to the Tribunal that the Respondent would continue to receive support if an order were granted and that he would not be rendered street homeless. The Respondent had taken the sensible step of instructing Mr Cassidy to represent him and was clearly willing to engage with advice agencies to assist him. On the other hand the Tribunal was satisfied that the Applicant was entitled to sell the Property if he chose to do so although it noted this was not his settled intention, and that he was entitled to regain possession of his investment. While the tenancy

would be brought to an end, the Respondent was a single man who would continue to receive support for his personal issues and help in finding alternative accommodation. Whilst it had sympathy for the Respondent, in the Tribunal's opinion on balance and taking all relevant factors into account the Tribunal found it would be reasonable to grant the order.

19. In the circumstances the Tribunal considered that in terms of Section 33 of the Housing (Scotland) Act 1988 it was reasonable to grant an eviction order.

Decision

20. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

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.

Shirley Evans

29 April 2022

Legal Chair

Date