



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/20/2413

Re: Property at 58 Turnhouse Road, Edinburgh, EH12 8ND (“the Property”)

Parties:

Ms Sheena Boss, 12 Kirkhill Drive, Edinburgh, EH16 5DW (“the Applicant”)

Mr Niranjan Siddegowda, Ms Suma Gowda, 58 Turnhouse Road, Edinburgh, EH12 8ND (“the Respondent”)

Tribunal Members:

Anne Mathie (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery of possession be granted subject to there being a delay on earliest enforcement of the order until 1 July 2021

- **Background**

This is an application in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Chamber Rules”) and section 33 of the Housing (Scotland) Act 1988 being an application for an order for repossession on termination of a short assured tenancy. An application was lodged with the Tribunal dated 18 November 2020. Along with the application form was lodged:

1. A paper apart
2. A copy tenancy agreement
3. A copy Form AT5
4. A letter of authority signed by Mr Richard Duncan (Joint Owner)

5. A Notice to Quit, section 33 notice and sheriff officer's certificate of execution of service in respect of Mr Niranjana Siddegowda
6. A Notice to Quit, section 33 notice and sheriff officer's certificate of execution of service in respect of Ms Suma Gowda
7. A copy section 11 Notice
8. A copy email to local authority intimating section 11 Notice

The application was accepted and assigned to a Case Management Discussion today.

A copy of the papers and intimation of today's Case Management Discussion were served on the Respondents requesting that any written representations be received by 23 December 2020. The Respondents were advised that

"The Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision on the application which may involve making or refusing a payment order. If you do not take part in the case management discussion, this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair."

No written representations were received from the Respondents.

- The Case Management Discussion

The case management discussion took place today by teleconference due to the Coronavirus pandemic. Ms Caldwell, TC Young Solicitors, attended on behalf of the Applicant. The Applicant also attended along with Edward Duncan, who had dealt with some exchanges with the Respondents in relation to the Property. The first Respondent attended on his own behalf and confirmed that no written representations had been lodged in advance of the case management discussion.

Ms Caldwell explained the background to the application and the supporting documentation which had been lodged. This all complied with section 33 of the Housing (Scotland) Act 1988 and therefore the eviction should be granted.

The first Respondent advised that he had lived at the Property with his wife and two children for 5 years. His children went to school locally and he wished them to keep attending the same school. He confirmed that they had received the notices in March 2020 but his position was that he had been advised by Mr Duncan to "rip up" the notices and that he didn't need to look for another Property as he would not be getting evicted. He advised that he was surprised to receive the "notice" in November saying he had to leave the Property. He had had some employment difficulties during the pandemic and had had negotiated a reduction in rent for a period (as shown in the rent statement for the related civil application (FTS/HPC/CV/20/2415) which has been withdrawn this morning). There followed an adjournment so that Ms Caldwell could take instructions on this.

Ms Caldwell thereafter advised that the Applicant's position was that they had served notices properly on 16 March 2020. They wanted to be fair to the Respondents and had delayed actioning the notices until November. They understood the challenges faced by the Respondents but want to sell the Property. The Notices were never formally rescinded. Even though there is no

legal requirement to give further formal notice of eviction proceedings being raised after service of the initial notice, TC Young had written to the Respondents on 2 November 2020 advising of the Applicant's intention to raise eviction proceedings and asking the Respondents to remove by the end of November. There was also a note of a telephone call between one of Ms Caldwell's colleagues and the first Respondent where the first Respondent accepted that the Notices had been served with enough notice given.

There was a difference in the parties' positions as to what had been said about the effect of the Notices. Even although this was a Rule 66 case and the Tribunal had no discretion and no power to look at reasonableness, there were still potential issues in relation to personal bar and lack of good faith if the Respondent could show that he was told to ignore the notices and that he would not be evicted. Ms Caldwell advised that she had instructions to offer that any eviction order be dated such that execution of the order could not take place for a period of two months.

A further adjournment was allowed in order that parties could have discussions about potentially delaying the execution of any eviction order. The Tribunal advised that it was open to it to send the application to a full hearing on evidence in relation to what was said between parties about the effect of the notices.

The case management discussion resumed once parties had had a chance to discuss matters further. Parties had agreed that an eviction order could be granted with the earliest execution date being 1 July 2021.

- Findings in Fact

1. Parties had entered into a short assured tenancy with an initial term from 1 February 2016 until 8 August 2016 and the agreement would continue on a month by month basis thereafter.
2. An AT5 had been served prior to the creation of the tenancy.
3. A section 33 Notice and a Notice to Quit had been served by Sheriff Officers giving the requisite notice on both Respondents on 16 March 2020.
4. The Notices predate the coming into force of the additional eviction protections afforded by the Coronavirus legislation.
5. The short assured tenancy ended at the ish date of 8 June 2020. Tacit relocation is not operating.
6. The requirements for repossession contained in section 33 of the Housing (Scotland) Act 1988 had been met.

- Reasons for Decision

The Tribunal took into account the papers and verbal submissions of parties provided this morning. While on paper the requirements of section 33 of the Housing (Scotland) Act 1988 had been met, and there was therefore no discretion afforded to the Tribunal and the Tribunal could not consider the reasonableness or otherwise of granting the order, there was dispute surrounding discussions that took place between parties in relation to the effect of the notices and the potential for eviction taking place. The first Respondent's position was that he had stopped looking for another property on the basis that he believed the

eviction would not take place. Parties themselves agreed, in the circumstances of this particular case, that an order for repossession should be granted with the earliest execution date being 1 July 2021.

- **Decision**

That the order for recovery of possession be granted with an earliest execution date of 1 July 2021.

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: Anne Mathie

Date: 8th January 2021