

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber)**

**Chamber Ref: FTS/HPC/EV/21/0766**

**Re: Property at 1 Newpoltonhall, Bonnyrigg, EH19 3HP (“the Property”)**

**Parties:**

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

**Mr Robert Lunn, 1 Newpolton Hall, Bonnyrigg, EH19 3HP (“the Respondent”)**

**Tribunal Members:**

**Virgil Crawford (Legal Member) and Angus Lamont (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**BACKGROUND**

1. By Lease dated 23 February 2010 the Applicant let the Property to the Respondent;
2. The Lease was a Short Assured Tenancy in terms of s32 of the Housing (Scotland) Act 1988 (“the 1988 Act”);
3. A Notice in terms of s32(2) of the 1988 Act had been served upon the Respondent prior to execution of the Lease;
4. A Notice to Quit and a Notice in terms of s33 of the 1988 Act were served upon the Respondent by Sheriff Officers on 22 September 2020;
5. An Application was presented to the Tribunal of 24 March 2021 seeking an Order for Eviction of the Respondent from the property;
6. A Notice in terms of s11 of the Homelessness etc. (Scotland) Act 2003 was intimated to the relevant Local Authority;

**CASE MANAGEMENT DISCUSSION**

7. The Applicant did not personally participate in the Case Management Discussion but was represented by Mr S Runciman, Solicitor, Messrs Gilson Gray LLP, Edinburgh;

8. The Respondent did not participate in the Case Management discussion. The Tribunal was in receipt of an execution of service by sheriff officers confirming that the place, date and time of the Case Management Discussion had been intimated to the Respondents, together with a copy of the case papers. In the circumstances the Tribunal, being satisfied in terms of Rule 24 of The First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (the “FTT Rules”) that the Respondent had received reasonable notice of the same determined that it was appropriate to proceed in accordance with Rule 29 of the FTT Rules;
9. Notwithstanding the fact that the Respondent did not participate in the Case Management Discussion, the Tribunal made enquiry of Mr Runciman in relation to whether or not it was reasonable to grant the Order being sought. Mr Runciman advised the Tribunal of the following:-
  - a. While the Respondent had not participated in the Case Management Discussion today, Mr Runciman had spoken with the daughter of the Respondent prior to the Case Management Discussion. She advised that arrangements were being made for her father to remove himself from the property on Friday 21 May 2021;
  - b. Separately, Mr Runciman had been in contact with the Local Authority about the progress of the current Application, it would seem on the basis that the Local Authority are taking steps to identify alternative accommodation;
  - c. The Respondent has been aware for a period in excess of one year that the Applicant was seeking to recover the property to enable it to be sold. Two previous Notices to Quit were served upon the Respondent, one on 10 March 2020 and a further one on 25 June 2020. Neither Notice was in proper form so could not be relied upon but, nonetheless, the Respondent has been aware of the Applicant’s intentions since at least 10 March 2020;
  - d. The current Notices were served on 22 September 2020, almost 8 months ago and there has, therefore, been ample notice of the current proceedings;
  - e. Mr Runciman was not aware of any vulnerabilities nor disabilities on the part of the Respondent;
  - f. In relation to the Applicant’s intention to sell the property, Mr Runciman had no further information about that. Arrangements for the marketing of the property he understands will be dealt with by the Applicant directly. Having said that, he does understand that the intention is for the property to be sold;

## **FINDINGS IN FACT**

10. The Tribunal found the following facts to be established:-
  - a. By Lease dated 23 February 2010 the Applicant let the Property to the Respondent;
  - b. The Lease was a Short Assured Tenancy in terms of s32 of the 1988 Act;
  - c. A Notice in terms of s32(2) of the 1988 Act had been served upon the Respondent prior to execution of the Lease;

- d. A Notice to Quit and a Notice in terms of s33 of the 1988 Act were served upon the Respondent by Sheriff Officers on 22 September 2020;
- e. The Notice to Quit requested removal from the Property by 23 December 2020, thereby ending the operation of tacit relocation from then;
- f. The notice in terms of s33 of the 1988 Act gave notice that possession was required on 23 March 2021;
- g. An Application was presented to the Tribunal of 24 March 2021 seeking an Order for Eviction of the Respondent from the property;
- h. A Notice in terms of s11 of the Homelessness etc. (Scotland) Act 2003 was intimated to the relevant Local Authority;
- i. The Applicant intends to sell the Property;
- j. It is reasonable to grant an order for eviction;

## REASONS FOR DECISION

11. While the Application to the Tribunal is for the termination of a Short Assured Tenancy in accordance with s33 of the 1988 Act, having regard to the terms of the Coronavirus (Scotland) Act 2020, the Tribunal still requires to be satisfied that it is reasonable that an Order for Eviction be granted;
12. The Tribunal was satisfied that the legal requirements to enable it to proceed to a consideration of eviction had been complied with in that a Notice to Quit had been served upon the Respondent, a Notice in terms of s33 of 1988 Act had been served upon the Respondent and the required minimum periods of notice had been provided in terms of those Notices;
13. A Notice in terms of s11 of the Homelessness etc. (Scotland) Act 2003 had been intimated to the Local Authority;
14. The Tribunal being satisfied that the legal formalities necessary to enable it to grant the order had been met, in determining whether it was reasonable to grant an order for eviction the Tribunal had regard to the following:-
  - a. The Respondent did not enter the proceedings and, therefore, did not oppose the Application;
  - b. From the information available, the Respondent has been aware, since at least March 2020, that the Applicant is seeking recovery of the property with a view to it being sold;
  - c. The most recent Notices, upon which the current Application were founded, were served upon the Respondent as far back as 22 September 2020;
  - d. From the information available, the Applicant is taking steps to remove himself from the property and has engaged with his Local Authority in relation to obtaining alternative accommodation.
15. In all the circumstances, in the absence of any appearance or opposition by the Respondent, the Tribunal considers that it was reasonable to grant the order sought by the Applicant.

## **DECISION**

The Tribunal grants order 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 at 1 Newpoltonhall, Bonnyrigg, EH19 3HP 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.

Order not to be executed prior to 12 noon on 23 June 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.**

Virgil Crawford

17 May 2021

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**Legal Member/Chair**

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**Date**