



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/22/0768

Re: Property at 38 Davidson Terrace, Haddington, East Lothian, EH41 3BA (“the Property”)

Parties:

Mr John Archibald, St Helens, Paterson Place, Haddington, EH41 3DU (“the Applicant”)

Ms Indre Buclute, Tomas Jotkus, 38 Davidson Terrace, Haddington, East Lothian, EH41 3BA; 23 Carlyle Gardens, Haddington, East Lothian, EH41 3LS (“the Respondents”)

Tribunal Members:

Rory Cowan (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a Possession Order be granted.

- Background

By application dated 15 March 2022, The Applicant seeks a Possession Order against the Respondents in terms of section 33 of the Housing (Scotland) Act 1988 (the Application). In support of the Application, the Applicant lodged various documents including the following:

- 1) Copy lease for the Property dated 19 March 2017, 21 March 2017 and 7 April 2017;
- 2) Form AT5 dated 16 March 2017;
- 3) Notice to Quit and Section 33 notice both dated 31 August 2021; and
- 4) Recorded delivery receipt and delivery confirmation.

Following acceptance of the Application, tribunal administration fixed a Case Management Discussion (CMD) to be heard by way of conference call on 29 September 2022. The Applicant attended and represented himself. The first named Respondent attended and represented herself. The second named Respondent did not appear and did not arrange for representation. Despite this, the Tribunal was satisfied that he was aware of the date of the CMD, that the matter could be dealt with in his absence if he did not attend and the procedure had been fair. Service of the Application had been carried out by Sheriff Officers on 11 August 2022 and the Tribunal decided that the CMD could proceed in his absence. In fact, the first named Respondent and the Applicant both confirmed that the second named Respondent had removed from the Property some time ago and possibly as early as the “summer” of 2021. The Applicant had also lodged a letter dated “May 2022” prior to the CMD from the second named Respondent confirming he had removed from the Property.

- The Case Management Discussion

The basis of the Application was discussed with the Applicant and the first named Respondent. Whilst the Application was based on section 33, the Applicant confirmed that the reason for seeking possession was that he intended to sell the Property. The reason for seeking to sell the Property was that he has other rental properties which are in need of upgrading both generally and with a view to meeting anticipated energy efficiency requirements and that he had no other way of financing such costs.

In response to the Applicant, the first named Respondent indicated she was not in a position to defend the action. She accepted the reasons outlined by the Applicant and in terms of the paperwork submitted stated that the Applicant “had done everything right”. That she “totally understood” his position. The first named Respondent was asked if she wished to seek legal advice in relation to the Application and the basis for same, but she declined. The question of reasonableness was discussed with the first named Respondent, and whilst she provided details of her circumstances, she indicated that she did not wish to resist the Application on the basis that it was not reasonable to grant the order for possession. The first named Respondent confirmed that she is a single mother with 2 young children aged 10 and 3 years. She is not in work and has been trying to seek social housing through the East Lothian Council. She explained that, until a possession order is granted the local authority will not treat her as homeless and will not provide her with alternative housing. She indicated that, as she is not in work, a private let is not an option for her, and she will require social housing. Her rent is paid by way of state benefits. She was unable to say how long it would take for her to be allocated social housing in the event that a Possession Order was granted by the Tribunal. The Applicant confirmed his understanding of things and indicated that, until the possession process was concluded, and an order granted, the local authority would not provide her with any social housing. The Applicant confirmed that there were no rent arrears.

The Tribunal explained the process and timescales should a Possession Order be granted to the first named Respondent, and she confirmed that she understood the position and the potential timescales. She reiterated that the Applicant was “doing

everything right” and was, in her view, “entitled to possession of the property”. The Tribunal adjourned for a period to consider the Application.

- Findings in Fact and Law

- 1) That the Respondents entered into a lease for the Property with the Applicant that commenced on 10 May 2017.
- 2) That the lease so entered into was a Short-assured Tenancy.
- 3) That on 2 September 2021 the Applicant served a Notice to Quit and Section 33 Notice on both the Respondents.
- 4) That the contractual tenancy has been validly terminated as at 10 March 2022.
- 5) That the required notice in terms of s33(1)(d) was thereby given to the Respondents.
- 6) That the first named Respondent remains in the Property.
- 7) That, in all the circumstances, it is reasonable to grant an Order for Possession.
- 8) That the Applicant is therefore entitled to an order for possession relative to the Property.

- Reasons for Decision

As detailed the Application proceeds under Rule 66. The basis for the request for a Possession order is therefore Section 33 of the Housing (Scotland) Act 1988.

In order to be able to grant such an Order for Possession, the Tribunal first needs to be satisfied that the Applicant had complied with the requirements of section 33 of the 1988 Act. These are:

- 1) The Short-assured tenancy has reached its ish;
- 2) That tacit relocation is not operating
- 3) There is no further contractual tenancy; and
- 4) The landlord has given the tenants notice that they require possession of the property concerned.

The notice period applicable in relation to section 33, as at the date of these notices, was 6 months. Both the NTQ and the section 33 notices were dated 31 August 2021 (but posted on 2 September 2021) and were set to expire on 10 March 2022. 10 March 2022 was an ish or end date. From the documents lodged with the Application, it appeared that the underlying tenancy met the requirements of section 32 of the 1988 Act and was therefore a Short-assured Tenancy.

As such, the Tribunal was satisfied that the requirements of section 33 had been met.

The only issue remaining for the Tribunal was whether it was reasonable to grant an Order for Possession in the circumstances. Having heard both parties and having considered the relevant circumstances detailed above, the Tribunal was satisfied that it was reasonable to grant an Order for Possession. The first named Respondent made it clear that she did not dispute the basis of recovery and the

reasons for same and, despite her circumstances, did not wish to advance an argument that it was not reasonable to grant such an order.

- Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988. The decision 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.

Rory Cowan

Legal Member/Chair

Date

29 September 2022