



**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/22/1962

**Re: Property at 37, (1F1), Logie Green Road, Edinburgh, EH7 4EY (“the
Property”)**

Parties:

**Mrs Lorraine Burns, Mr William David Burns, 24 Claremont Road, Edinburgh,
EH6 7NE (“the Applicants”)**

**Ms Barbara McGeary, Ms Susan McGeary, 37, (1F1), Logie Green Road,
Edinburgh, EH7 4EY (“the Respondents”)**

Tribunal Members:

Andrew Upton (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an eviction order should be granted.**

Findings in Fact

1. The Applicants are the landlords, and the Respondents the tenants, of the Property under a Short Assured Tenancy Agreement which commenced on 17 June 2017.
2. The Respondents have behaved anti-socially towards their neighbours.
3. The Respondents have obstructed the Applicants’ taking access to the Property in accordance with the tenancy agreement.
4. The Respondents intend to remove from the Property on 11 July 2023.

Findings in fact and law

1. The contractual short assured tenancy is at an end.
2. No other contractual tenancy is in place.
3. It is reasonable to grant an eviction order.

Statement of Reasons

1. This Application called for a Hearing on 4 July 2023. The Applicants were represented by Ms Sharon Shanley of Shanley Lettings Ltd. The Respondents were neither present nor represented.
2. In advance of the Hearing the Respondents emailed the Tribunal to seek a postponement. They suggested (i) that the Hearing was unnecessary since they intended to remove from the Property on 11 July 2023, and (ii) that their appointed representative at the Citizens Advice Bureau was unable to attend on their behalf. That postponement request was opposed by the Applicants.
3. This Application has been plagued by procedural delays. The first CMD was on 4 November 2022. That CMD was continued to 15 February 2023. In advance of that CMD, the Respondents sought a postponement asserting that they required to attend a funeral. No evidence in support of that request was lodged, and the Respondents did not attend the CMD. The Tribunal then fixed a Hearing on the Application for May 2023. That Hearing was postponed due to the date not being suitable for either party. The date that was fixed for a new hearing was 4 July 2023. The Respondents waited until 21 June 2023 to seek a postponement, and did not submit supporting documentation until 30 June 2023.
4. The Respondents have known about the Hearing since April 2023. That ought to have been sufficient time for them to seek and obtain legal advice and assistance. The Respondents have made no attempt to attend the Hearing and explain why a postponement should be allowed. Having regard to the overriding objective to deal with proceedings justly, the Tribunal is not persuaded that a further delay is justified in the circumstances. Accordingly, the Tribunal refused the postponement request.
5. In terms of Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), the Tribunal may proceed to hear a case in the absence of a party if satisfied that the non-attending party has had appropriate notice of the Hearing. In this case, the Respondents received appropriate notice of the Hearing. Accordingly, the Tribunal determined that the Hearing ought to proceed in the absence of the Respondents.
6. This is an Application for an eviction order under section 33 of the Housing (Scotland) Act 1988. The Applicants are the landlords, and the Respondents

the tenants, of the Property under a Short Assured Tenancy Agreement which commenced on 17 June 2017. The Applicants have served a notice to quit on the Respondents to terminate the contractual assured tenancy, and have also given notice to the Respondents under section 33(1)(d) of the 1988 Act. The service, content and validity of the said notices is not challenged. The only question for the Tribunal to determine is whether it is reasonable to grant the eviction order in terms of section 33(1)(e) of the 1988 Act.

7. Ms Shanley is the letting agent of the Applicants. She spoke of difficulties experienced with the Respondents. She said that the Respondents had persistently refused access to contractors instructed by the Applicants and the letting agent to attend to gas safety checks and other repairing issues. Previous proceedings to the Tribunal for assistance had been refused. A fresh action for access had now been raised. Since the last calling, access had been arranged and then cancelled by the Respondents. Reference was made to correspondence between Ms Shanley and the Respondents in that respect which had previously been lodged at the Tribunal.
8. Ms Shanley spoke of receiving reports from neighbours of the Respondents about anti-social behaviour. Those reports included, amongst other things, (i) persistently taking copious amounts of rubbish out of the Property and through the common close at around 3.00am, to the disturbance of neighbours, (ii) shouting at neighbours making appropriate use of the common garden ground to the rear of the Property, and (iii) shouting at gardeners cutting grass during ordinary business hours. In response to questioning from the Tribunal, Ms Shanley said the behaviour complained of in these reports had persisted over a considerable period. She had submitted to the Tribunal an email of 22 October 22 from a neighbour detailing the nuisance caused by the Respondents. Ms Shanley said she continued to keep in contact with that neighbour, who was the one most affected by the Respondents' behaviour, and that anti-social behaviour was continuing on a weekly basis. The neighbour was not available to give evidence to the Tribunal today as she had a medical appointment. Ms Shanley also spoke of being told by Mr Burns that one of the Respondents had, when he attended at the Property for an inspection, stood naked at the window staring at him.
9. Ms Shanley finally spoke of the Applicants' desire to sell the Property. She said that, due to recent interest rate rises, the mortgage payments were now higher than the rental payments. Whilst the Respondents were not in arrears, historic arrears having been resolved, the Applicants could not continue to let the Property in the current economic climate and did not wish to do so.
10. The Respondents were given an opportunity to attend the Hearing and give their own account of matters, but chose not to do so. That notwithstanding, the Tribunal gave consideration to the matters set out by the Respondents in the correspondence lodged with the Tribunal. The Tribunal noted that the Respondents claimed to be ill. In particular, it was said that Barbra McGeary suffers from lung cancer and unspecified neurological and motor function issues, and that Susan McGeary suffers from an unspecified heart condition

and bowel issues. No evidence was submitted by the Respondents in support of those alleged conditions. The Tribunal noted that the Respondents asserted that they intended to remove from the Property on 11 July 2023.

11. In all of the circumstances, the Tribunal was satisfied that it is reasonable to grant the eviction order. The Tribunal is satisfied that the Respondents' conduct towards their neighbours has caused nuisance and alarm, and is anti-social within the meaning of clause 13.1 of the tenancy agreement. The Tribunal is satisfied that the Respondents have refused access to contractors instructed by the Applicants and have thereby (i) interfered with their ability to meet their obligations under the landlord repairing standard in the Housing (Scotland) Act 2006, and (ii) breached their contractual obligation to allow access in terms of clause 9.6 of the tenancy agreement. Finally, and most pertinently, the Tribunal considered that the Respondents could not maintain a position that the grant of an eviction order, which will not be enforceable until at least 4 August 2023, would be prejudicial to them in circumstances where they had expressly stated to the Tribunal that they would be removing from the Property on 11 July 2023.
12. Accordingly, the Tribunal granted the eviction order.

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.

A Upton

Legal Member/Chair

04/07/2023
Date
