



**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/23/1579

Re: Property at 3F3, 288 Easter Road, Edinburgh, EH6 8JU (“the Property”)

Parties:

**Ms Sandra Hennessy, Evelyn Courtney, 99 The Murrays, Liberton, Edinburgh,
EH17 8UD; 2 Schoolyard Court, Roslin, Midlothian, EH25 9PQ (“the Applicants”)**

Mr David Lines, 3F3, 288 Easter Road, Edinburgh, EH6 8JU (“the Respondent”)

Tribunal Members:

Lesley-Anne Mulholland (Legal Member) and Mary Lyden (Ordinary Member)

DECISION (IN ABSENCE OF THE RESPONDENT)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it should grant an order for possession of the Property.

Background

1. An application was received under Rule 66 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a short-assured tenancy by the Applicants against the Respondent.
2. The application contained :-
 - a. the Tenancy Agreement
 - b. AT5,
 - c. Section 33 Notice,
 - d. Notice to Quit,
 - e. evidence of service by sheriff officers and

- f. Section 11 Notice with evidence of service.
3. A two-member Case Management Discussion (CMD) took place at 10.00 am on 9 October 2023 by teleconference. The Applicants were represented by Mr Barr who joined the hearing.
 4. The Applicants are the proprietors and landladies of the property. The Respondent is the tenant.
 5. The Respondent has failed to engage with the application in any way. We waited until 1010am. The Respondent had not made contact to advise of any difficulty he may have had. It is helpful to state here that the discussion concluded at around 1040am and the Respondent had not made contact by then.
 6. We took into account that the notice to quit was served in February 2023 and an application for an Order for Eviction was made in May 2023. Having regard to the overriding objective, we decided to continue with the discussion in the absence of the Respondent after satisfying ourselves that the papers had been properly served and that he was notified of today's CMD.

THE DISCUSSION

7. We were referred to the Applicants' updated section 5 statement. Mr Barr informed us that the Applicants wish to recover possession on the grounds that they need to sell the property; need the tenant to leave in order to refurbish the property and that due to changes in the tax system and the mortgage rate, it is no longer financially viable to continue renting out the property as it is running at a loss.
8. One of the Applicants was dismissed from work because of incapacity due to mobility issues, has incurred a loss of earnings and has a smaller than anticipated pension. Funds from the sale of the property would allow necessary lifestyle changes and adaptations. Recent diagnosis of breast cancer has impacted in the other Applicant who no longer wants the responsibility of managing the property. One of the Applicants wishes to relocate to England and being tied to the property is prohibitive. Both Applicants are now retired and their overall circumstances mean that it is no longer in their interests to maintain the property for rent and their intention is to sell it as soon as possible after carrying out any necessary repairs and updating.
9. During the length of the tenancy, the rent has modestly increased. If the tenant were to remain in the property, the rent would need to be reviewed and increased significantly to cover costs which would be over the limit

allowed by the Scottish Government. The current rent payment for this one bedroomed flat is £618 per month.

ANALYSIS AND CONCLUSION

10. Section 33 of the 1988 Act (as amended by the Coronavirus (Scotland) Act 2020) provides that a Tribunal may grant an order for possession under a short-assured tenancy where the tenancy has reached its term; tacit relocation is not operating; the landlord has given notice to the tenant that they require possession of the house; and that it is reasonable to do so.
11. We were satisfied that all the requirements had been met.
12. Mr Barr informed us that the Applicants only have one property. The Respondent is registered as homeless and would be entitled to accommodation through the local authority homeless legislation.
13. Mr Barr had spoken to the Respondent who informed him that he did not wish to inconvenience the Applicants. He was not aware of any health issues the Respondent may have and none had been notified to the Tribunal. His name has been down for housing in the Inverness area for a long period of time and he is registered as homeless with Edinburgh local authority. He had been to see a property that was not suitable and is waiting on another offer.
14. We were satisfied that there was nothing before to indicate that the Respondent was resisting the granting of the order. The Respondent has had sufficient time to engage with the application to advise of any circumstances that may make the granting of the order unreasonable. He has not taken that opportunity. We were satisfied that Mr Barr had made sufficient enquiry with the Respondent and the Respondent has registered as homeless in the Edinburgh area and also in the Inverness area where he has been registered for housing for some time.
15. Mr Barr sought an order under Rule 66 which does not require us to be satisfied of the financial hardship of the Applicants. We were satisfied that the Applicants require possession of the property in order to sell it. We accept that they have health problems, that this is the only property that they manage as a tenancy and that it is no longer in their interests to continue renting the property.
16. Having considered all of the information, individually and together, we were satisfied that the requirements of Section 33 had been met and granted an order for eviction under Section 33 of the Housing (Scotland) Act 1988 as it was reasonable to do so.

DECISION

25. An order in favour of the Applicants against the Respondent for recovery of possession of the property has been granted.

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.

LA Mulholland

Legal Member/Chair

Date 9 October 2023