



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/21/2848

Re: Property at 25 Pollock Road, Newton Mearns, East Renfrewshire, G77 6DH (“the Property”)

Parties:

Mr William Davidson, 2/5 Arnprior Road, Glasgow, G45 9HG (“the Applicant”)

Ms Victoria Chalmers, 25 Pollock Road, Newton Mearns, East Renfrewshire, G77 6DH (“the Respondent”)

Tribunal Members:

Susan Christie (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for possession of the Property to the Applicant under section 33 of the Housing (Scotland) Act 1988.

Background

1. The application by the Applicant for recovery of possession of the Property was made on 16 November 2021 and accepted by the tribunal on 30 November 2021. It is made under Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017.
2. The papers were served on the Respondent by letterbox service on 21 December 2021.
3. Written responses were invited to be submitted for the Respondent by 11 January 2022. None were submitted.
4. On 18 January 2022 the tribunal was advised that the Legal Services Agency were instructed to represent the Respondent at the Case Management Discussion.

Case Management Discussion

5. A Case Management Discussion took place on 26 January 2022 by conference call.
6. The Respondent took no issue with the statutory notices served. The Parties agreed that a hearing be fixed for the tribunal to hear the Parties respective evidence to determine whether it was reasonable to grant the order sought. The Respondent's Representative sought a period of eight weeks to ingather medical evidence and had issued to the Respondent as mandate for release of information from the GP.
7. A hearing was fixed for 6 April 2022 which was a suitable date for all, and the Parties were advised then. Written confirmation followed.
8. A Direction dated 28 January 2022 was issued to the Parties seeking lists of witnesses, an indexed bundle of documents, with documents attached and outline written submissions along with copies of legislation or case law referred to, to be lodged no later than 25 March 2022.
9. On 21 March 2022, the Applicant submitted a Second Inventory of Productions containing items numbered 8-13. This followed on from the First Inventory of Productions for the Applicant numbered 1-7. A list of witnesses was produced showing two named persons, in addition to the Applicant himself. An outline submission was produced.
10. On 22 March 2022, the Respondent submitted a GP medical report dated 15 March 2022. It was accompanied by an application to postpone the evidential hearing as the full medical records requested had not been received from the GP and were now considered to be late. An independent psychiatric report was being considered but could not be instructed without the records.
11. The application to postpone was opposed.
12. The tribunal carefully considered the written reasons given by both Parties and perused the content of the medical report produced. The application to postpone was refused by the tribunal at that time. The tribunal indicated it was prepared however to hear any further representations after hearing the available evidence on 6 April 2022.

The Hearing

13. A Hearing took place on 6 April 2022 by conference call. Both Parties participated. The Applicant was represented by Ms Donnelly. The Respondent was represented by Mr McPhee.
14. The following documents were agreed in respect of their terms and validity
 - (a) Tenancy Agreement
 - (b) Form AT5
 - (c) Notice to Quit
 - (d) Section 33 Notice
 - (e) Recorded delivery receipts relating to the Notices
 - (f) Section 11 Notice
 - (g) E mail to local authority with Section 11 Notice
 - (h) Check in Inventory
 - (i) Check in photographs
 - (j) Report of inspection of the Property 3 March 2022
 - (k) Mortgage statements over the Property
 - (l) Mortgage statements over the Applicant's current home

(m) Medical report for the Applicant's partner dated 17 March 2022

(n) Medical report for the Respondent dated 15 March 2022.

15. The Applicant gave evidence that he lived with his partner, a teenage son, and a young daughter in their current home that he owned. It was a two bedroom flat, and the accommodation was cramped and unsuitable for their needs. He explained the variety of ways the adverse impact of this on day to day living and felt it had also been a factor that was adversely impacting on his son's education. He was sitting exams soon and planned to stay on at school. He and his partner shared a bed with his very young daughter, and this was not a suitable arrangement for them. There were family tensions because they were living on top of each other, and it had impacted on his partner, and she had seen her GP. They felt responsibility towards their family for not providing the right surroundings. He had only ever kept the Property for a rental income and had always intended to sell it when he had to do that. Now he wanted to. He took the tribunal through the information on the mortgage statements that evidenced he had a variable rate interest only mortgage and the payments had almost doubled. He had extra family expenditure. He had looked at the expected market values and considered the Property was holding the most profit due to the time he had owned it, subject to condition when recovered from the tenant. His intention was to sell the Property first, release the equity then sell his home and buy a bigger property for the family. He was concerned about the condition of the Property due to the terms of the recent inspection. He may have to undertake work before selling it and incur the necessary expense. He had a letting agent who currently dealt with the day to day management.
16. The Applicant's partner Angela Lyons gave evidence along the same lines as the Applicant explaining the adverse impact the current family arrangements were having on the family, in her view. It was cramped and her son's room was used for storage of toys and their daughter's clothes and was not an ideal place to study. The home was far too small. Their daughter was sleeping in with them and she was getting too old for that arrangement. She needed her own room and space and her son needed better conditions. His exams were ending on 11 May 2022, but he was staying on at school. She had concerns for her children. It had affected her mental health as well and she was not coping well. She has been prescribed medication and may need to be given a higher dose to help her stay steady until circumstances improved. There had been tensions between the family members as they were always on top of each other due to lack of space. She thought a two storey property would be better for them. They had not considered renting and could not see any other way financially they could move without the Property being sold.
17. Jonathan McLeish of Thomson residential gave evidence for the Applicant. He is a property manager and has dealt with the day to day general running of the let on behalf of the Applicant since the initial viewing of it by the Respondent. He had therefore had the full professional relationship with the Respondent and had regularly inspected it. He referred the tribunal to the condition of the Property when the tenant moved in and said the condition was fair to good. It had not been freshly decorated then but had been professionally cleaned. He spoke to the recent inspection and felt that it was not as well cared for currently and the garden had usually been poorly

maintained over the years. There was no malicious damage of it, nor had it been abused as such. There had been accidental damage that had not yet been repaired by the tenant. There was a lack of ongoing housekeeping that had reduced the aesthetics. He anticipated that redecoration, new floor coverings, potential upgrades of the kitchen and bathroom would be advised before it was marketed. It would need considerable cleaning. He had seen a gradual deterioration over the pandemic and the Respondent now appeared to be living alone. He understood the tenant was looking for a Council house. He thought the intention of the Applicant was to sell. He had heard a conversation, or parts of a conversation, between the office manager and the Applicant that at some point there had been a suggestion that the Property would have given the Applicant and his family more space, but he did not directly know what had been spoken about or decided ultimately.

18. The Respondent gave evidence. She was unable to work due to the conditions detailed in the medical report produced. She explained how this adversely affected her day to day living. She is unable to clean, cook and shop independently. She suffers from agoraphobia symptoms whereby she only goes out when her son accompanies her. It has affected her for about one year. She has been looking for a council let. She could not afford the deposit on a private let. She stated that becoming homeless would result in her taking her life. She couldn't live without a home. It would affect her badly. She had been under the care of a psychiatrist for around four years with possibly meetings 4-5 times per year but had since been discharged. The unsettled situation was having an adverse effect on her. She did accept that some of her conditions were being managed but needed a review as she felt her mental health had deteriorated. Her son was her only carer. When asked, she had access to an emergency crisis mental health service in the community who would come out straight away in a crisis. She could also see her GP, but the appointment times were approximately two weeks ahead. She had no current social work input and no care package. She explained the housing position with the local authority. She has a dedicated homeless officer who she had spoken to a couple of months ago. She had been offered a property in an area that she could not accept because of an adverse event in her life. She had appealed that offer and the outcome was awaited. She was allowed to bid weekly for a one bedroom council tenancy using a bidding system. She was in Band A, the highest band. She would be bidding again on the day of the Hearing and would be told at the end of each week whether she had been successful. If not, she repeated the process. Her son lives elsewhere but does visit and sometimes stays. She did not accept the condition of the Property had deteriorated but did think it was cluttered and the garden was overgrown. When asked, she was unaware of all of the potential supports she could investigate.
19. Mr McPhee then sought to postpone the Hearing to a later date, as he had been unable yet to obtain the medical records to seek an independent psychiatric report. This was opposed and the tribunal heard from the Representatives. The tribunal refused the motion to postpone as it considered there were no definitive timescales for the proposition to be achieved in, a report had not been requested from the psychiatrist that had treated the Respondent over a long period of time (until recently), and the medical report

from the GP gave the tribunal a detailed and accurate view of the Respondent's medical position. The tribunal in reaching this decision had regard to the overriding objective and whether an informed decision could be fairly achieved on the evidence presented.

20. Ms Donnelly submitted on behalf of the Applicant that an Order should be granted today in favour of the Applicant. She relied on the proper Notices having been served and agreed. The issue of reasonableness was supported by the evidence of the Applicant and his witnesses who she considered credible and reliable. The Applicant and his partner spoke to their personal family circumstances justifying the grant of the Order. The Property had been purchased in 2015 and used to top up the Applicant's income until he needed to sell it and it was always his intention to sell it when he needed to. The tenancy began in 2017 when the legislation did not include the reasonableness test. The Applicant could not have anticipated this being introduced. His main concerns now related to his family and the financial implications. He was also concerned about the condition of the Property if the tenancy were to continue. He was concerned about the health of his partner. Their circumstances could not change until a sale was achieved. The Respondent had not searched for a property despite being served with the Notices a year ago. She had not explored the private sector. She had been discharged from her consultant psychiatrist and had not sought a review of her medication from her GP yet. Her health issues were historical and not directly related to this application. She had not sought any other additional support or stressed the urgency of the situation to her homeless officer. The Applicant should be able to release the equity in the Property.
21. Mr McPhee on behalf of the Respondent agreed the only issue now live was whether it was reasonable to grant the Order or not. He referred to *Cumming v Danson* 1942 2 All ER 653 at page 655 where Lord Green observed that consideration should be given to all relevant circumstances at the date of the hearing. The tribunal was not provided with a copy of the decision. He considered that the Applicant had not investigated all other options to resolve their cramped living conditions given that they had multiple income streams. He considered that the situation could not be improved for the Applicant's partners son, as the exams dates were so close. He considered the medical report alluded to Ms Lyon's involvement in litigation which was not the same as her living conditions. Mr McLeish's evidence was not controversial, and his evidence suggested it was normal to expect works at the conclusion of a let. He submitted the Respondent was credible and reliable. Her ill health had a considerable effect on her. She had been discharged from her psychiatrist but had spoken of suicidal ideation and agoraphobia affecting her day to day activities. She was vulnerable in the extreme. She had taken reasonable steps in so far as her mental health would allow. There were pressures in Glasgow for housing. He considered it was not reasonable to grant the order.
22. The tribunal indicated to the Parties that they would consider the evidence and a decision would be issued in due course.

The Legislation

In relation to Coronavirus (Scotland) Act 2020 (Eviction from Dwellinghouses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:

33.— Recovery of possession on termination of a short assured tenancy.

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied—

(a) that the short assured tenancy has reached its ish;

(b) that tacit relocation is not operating;

(c)..... [repealed]

(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house and

(e) that it is reasonable to make an order for possession.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than six months, that period;

(ii) in any other case, six months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that ish shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.

Findings in Fact

- I. The Parties entered into a short assured tenancy which commenced on 11 August 2017 to 12 February 2018 and monthly thereafter
- II. A valid Notice to Quit dated 25 March 2021 was served on the Respondent on 31 March 2021, requiring the Respondent to quit the property by 12 October 2021.
- III. A valid Notice under section 33 of the Housing (Scotland) Act 1988 was served on the Respondent on 31 March 2021.
- IV. Said Notices required the Respondent to remove from the Property by 12 October 2021.
- V. A section 11 Notice under the Homelessness etc (Scotland) Act 2003 was served on the relevant local authority on 15 November 2021.
- VI. The short assured tenancy has reached its finish.
- VII. Tacit relocation is not operating.
- VIII. No further contractual tenancy had been entered into between the Parties.
- IX. The Respondent remains within the Property.
- X. The statutory requirements of section 33 of the Housing (Scotland) Act 1988 have been met.
- XI. It is reasonable to grant and order for recovery of possession in favour of the Applicant.

Reasons for Decision & Decision

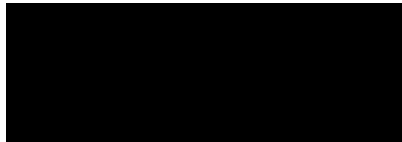
The tribunal carefully considered the documentary evidence and the oral evidence. The tribunal accepted the evidence of the Applicant and his witnesses and so too the evidence of the Respondent. All made efforts to answer the questions put to them to the best of their knowledge and ability.

The statutory requirements having been met and documentation agreed, the tribunal considered the question of reasonableness. The Applicant had fully explained the reasoning behind him requiring to sell the Property for the benefit of himself and his immediate family. He provided evidence of the financial obligation attached to the Property ownership and the effect rising costs had on him. He spoke of the unsuitability of his current accommodation for his growing family and the adverse impact the close living arrangements. These were not insignificant. The tribunal accepted the evidence of the Applicant that he intended to sell the property to release the equity and secure better accommodation more suited to his family's needs. This was the route he wished to take, and it did not seem to the tribunal to be an unreasonable expectation on his part. The tribunal acknowledges that the consideration of reasonableness was more recently introduced, and that the Applicant could not have foreseen such a significant change to the route to recovery. The day to day effects on his family were real. The tribunal noted that when the Respondent entered into the short assured tenancy, she had agreed to it and the legislation at that time did not provide for the additional question of reasonableness. She too could not have foreseen the change. It is clear that the Respondent has longstanding chronic health conditions, more particularly the mental health issues. The tribunal noted that the medical evidence produced was accepted by the Applicant and the tribunal carefully considered it before deciding. It is correct to say that the condition requiring referral to a consultant psychiatrist is longstanding and has not been caused only by this application. It is a prediction that she will suffer these symptoms to some degree potentially for the rest of her life. She was considered to be stable enough in October 2021 to be discharged from psychiatry, but it seems likely that she will require to seek a further referral through her GP at some point again in the future. The general consequences of eviction are well known and affect all. For the Respondent even more so as she has pre-existing mental health issues. The Respondent requires to obtain support from her GP and the crisis community health team to treat and abate any exacerbation, whether that relates to the consequences of the grant of this application or to any possible deterioration generally in her mental health. She had spoken to the mechanism for seeking such help and acknowledged that she may need to do this and review her medication in particular. She has the support of her son who assists her regularly with shopping, cooking, and cleaning. She has taken the significant step of securing a dedicated homeless officer and has been offered and rejected an unsuitable property and bids weekly for other properties. She is in the highest band for selection. Accommodation secured from the local authority may provide her with routes to other forms of support. It seems inevitable that the Respondent will secure alternative accommodation through the local authority. The Parties have competing interests in the short term. Having considered all the evidence presented, the tribunal considers

on balance that it is reasonable to grant an order in favour of the Applicant. The tribunal decision is 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.



Legal Member/Chair

11 April 2022

Date