



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/22/4038

Re: Property at Flat 2/2, 502 Cathcart Road, Glasgow, G42 7BX (“the Property”)

Parties:

Mrs Ranbir Sandhu, 15 Brent Avenue, Glasgow, G46 8JU (“the Applicant”)

Mr Shams Nizami, 2/2 502 Cathcart Road, Glasgow, G42 7BX (“the Respondent”)

Tribunal Members:

Ruth O'Hare (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 to make an eviction order

Background

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under section 33 of the Housing (Scotland) Act 1988. In support of the application the Applicant provided the following documentation:-
 - (i) Short Assured Tenancy Agreement between the parties dated 23 October 2015 and Form AT5 of same date;
 - (ii) Notice to Quit dated 22 July 2022 together with proof of service by recorded delivery mail;

- (iii) Notice under section 33 of the Housing (Scotland) Act 1988 dated 22 July 2022 together with proof of delivery by recorded delivery mail;
 - (iv) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Glasgow City Council; and
 - (v) Mandate from the Applicant authorising Colin Hamilton to act on her behalf.
- 2 Following a request from the Tribunal the Applicant provided a copy of the title deeds for the property confirming ownership, confirmation of landlord registration and proof of service for the section 11 Notice by recorded delivery mail.
- 3 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was assigned for the 8th March 2023 to take place by teleconference due to the restrictions imposed by the Covid-19 pandemic. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondents by Sheriff Officers.

Case Management Discussion

- 4 The Case Management Discussion took place by teleconference on 8 March 2023. The Applicant was represented by Mr Hamilton. The Applicant herself was not in attendance. The Respondent was not present. The Tribunal noted that he had been served with the application paperwork together with notification of the date and time of the Case Management Discussion and determined to proceed in his absence.
- 5 The Tribunal explained the purpose of the Case Management Discussion and asked Mr Hamilton to address it on the Applicant's position.
- 6 Mr Hamilton advised that he had represented the Applicant since 2010, managing the property. She had owned it for over 30 years, having inherited it previously. Mr Hamilton confirmed that the property was originally used as accommodation for family members, an example being children who were at university. The property had laid empty for a number of years until family members suggested the Applicant let it out. It had been let since 2010, with the Respondent taking up a tenancy in November 2015. The tenancy had proceeded satisfactorily until the covid-19 pandemic in March 2020. The

Respondent had fallen into arrears at that point. As at the expiry of the Notice to Leave the arrears stood at £7000 however the Applicant did not wish to take any action to pursue the debt. She had been very understanding of the Respondent's circumstances. Mr Hamilton confirmed that the Applicant had decided to sell the property prior to the pandemic but had subsequently put plans on hold as a result of the situation. The Respondent was told verbally of her intentions in this regard in November 2021. He had then been served with formal notices in July 2022, which expired on 1 November 2022. He had failed to vacate.

- 7 Mr Hamilton confirmed that the Applicant still wished to sell the property. Her reasons for selling was the fact that the property was not in a good condition and had a rating of E in the energy performance certificate. It would require work to bring it up to standard in line with the Scottish Government legislation which required properties to meet a certain banding by April 2025. The Applicant had no means, nor the desire, to upgrade the property, hence her intention to sell. Mr Hamilton advised that he had been told verbally that the Respondent had been offered social housing in Castlemilk however he had turned this down as he wished to stay in Govanhill. Mr Hamilton pointed out that the correct notices had been served to bring the short assured tenancy to an end and his position was that an eviction order was reasonable in the circumstances.
- 8 In response to questions from the Tribunal Mr Hamilton advised that the Respondent had been served with the Form AT5 in advance of signing the tenancy agreement. He was born in Glasgow in December 1975. There had never been any real problems with the tenancy. Mr Hamilton was unclear who else was residing in the property. At the last inspection he undertook he had noted an adult male and adult female who appeared to be residing in the two bedroom property. He was not aware of any children residing there. He believed someone was still residing there with the Respondent but he had been unable to confirm this due to a lack of engagement from the Respondent. He had managed to get a hold of the Respondent by phone on 21st February 2022 and he had asked the Respondent to confirm who was residing in the property but the Respondent had failed to do so. Mr Hamilton confirmed that the Applicant was over 60 and had little direct dealings with the Respondent. Mr Hamilton or her daughter dealt with the correspondence on her behalf. He wasn't aware that she let out any other properties, she was not a professional investor. This had been a family property that she had chosen to let out.

Relevant Legislation

- 9 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Housing (Scotland) Act 1988, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (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 end;

b) that tacit relocation is not operating; and

(c)

(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 time 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.”

The Cost of Living (Tenant Protection) (Scotland) Act 2022 is also relevant to this application, it having been received by the Tribunal after 28 October 2022.

Findings in Fact and Law

10 The Applicant entered into a Short Assured Tenancy Agreement with the Respondents which commenced on 1 November 2015 for a period until 30 April 2016 and monthly thereafter.

11 The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.

- 12 On 22 July 2022 the Applicant delivered a Notice under section 33 of the Housing (Scotland) Act stating that the Applicant required the property back by 1 November 2022 and a Notice to Quit to the Respondent which sought to terminate the tenancy as at that date. The Notice to Quit was in the prescribed form. The Notices were served by recorded delivery mail.
- 13 The Notice to Quit terminates the tenancy as at 1 November 2022 which is a valid ish date.
- 14 The Respondent has sought alternative accommodation and received an offer of housing which he declined.
- 15 The Respondent has accrued rent arrears, which stood at £7000 as at 1 November 2022. The Applicant does not intend on pursuing the Respondent for the outstanding amount.
- 16 It can reasonably be assumed that there are no dependents residing in the property. It can reasonably be assumed that the Respondent is, or has in the past, resided with other adult occupants.
- 17 The Respondent's engagement with the Applicant regarding the tenancy has been sporadic and poor.
- 18 The Applicant inherited the property around 30 years ago. The property has been let since 2010.
- 19 The Applicant wishes to sell the property.
- 20 The Applicant is not a professional investor. The Applicant does not let out any other properties.
- 21 It is reasonable to make the order sought by the Applicant.
- 22 The provisions of section 33 of the Housing (Scotland) Act 1988 have been met.

Reasons for Decision

- 23 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would

not be prejudicial to the interests of the parties. The Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved. The Respondent had been given the opportunity to participate in the proceedings but had failed to do so.

- 24 The Tribunal was satisfied that the Respondent had been served with a valid Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988. The issue for the Tribunal to determine therefore was whether it was reasonable in all the circumstances to grant an eviction order.
- 25 The Tribunal noted the patience the Applicant had shown towards the Respondent in the face of significant rent arrears. The Tribunal also had cognisance of the fact that the Respondent had been offered another property which he had turned down, which would have provided the opportunity for him to remove from the property, and noted a pattern which showed a lack of engagement with Mr Hamilton as the Applicant's representative which was not productive. The Applicant clearly intended on selling the property and the Tribunal considered she was entitled to do so after a lengthy period of ownership. Whilst Mr Hamilton was unable to confirm unequivocally who was residing in the property, the Tribunal concluded that this was due to the Respondent's failure to engage when asked for this information. The Tribunal considered that it could reasonably assume, in the absence of evidence to the contrary, that there were no dependents residing at the address. There was no information before the Tribunal to contradict the position put forward by Mr Hamilton, which the Tribunal found to be straightforward and credible, therefore having balanced the particular facts and circumstances of this case the Tribunal concluded that it would be reasonable to make an eviction order.
- 26 It should be noted that this was an application to which the Cost of Living (Tenant Protection) (Scotland) Act 2022 applies. As at the time of writing this prevents any action being taken to enforce the eviction order prior to 30 March 2023 however the Tribunal understands there may be steps taken by the Scottish Government to extend this period. The Tribunal would therefore suggest the Applicant seeks independent advice regarding the impact of the legislation on the order granted.
- 27 The decision of the Tribunal 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.

Ruth O'Hare

Legal Member/Chair

8 March 2023
Date