

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 11 of the Rent (Scotland) Act
1984**

Chamber Ref: FTS/HPC/EV/23/0767

Property : 1/2 456 Victoria Road, Glasgow G42 8YU (“Property”)

Parties:

**Peter Large and Maria Lander, 0/1, 18 March Street, Glasgow G41 2PX
 (“Applicant”)**

**Raeside Chisholm, Solicitors, Tontine House, 8 Gordon Street, Glasgow G1 3PL
 (“Applicant’s Representative”)**

Jean Thomson, 1/2 456 Victoria Road, Glasgow G42 8YU (“ Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Gerrard Darroch (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber)
 (“Tribunal”) determined not to make an order for possession of the Property.**

Background

1. The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E along with supporting documents being a copy notice to quit under the Rent (Scotland) Act 1984 (“1984 Act”) dated 6 February 2023; royal mail proof of delivery on 8 February 2023; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 6 February 2023; affidavit of each Applicant dated 6 February 2023 and a copy entry in the rent register regarding the Property.
2. A case management discussion (“CMD”) took place before the Tribunal on 5 May and 3 August 2023. Reference is made to the note of the CMDs. The outcome was that the Tribunal issued a direction and fixed a Hearing to take place on 13 November 2023. The Applicant lodged four inventories of productions consisting of items 1 to 48. The Respondent did not lodge any productions.

3. The ground for eviction relied upon by the Applicant was Case 8A which was amended into schedule 2 of the 1984 Act by the Cost of Living (Tenant Protection) (Scotland) Act 2022 ("2022 Act"). Case 8A provides as follows :

"The landlord who is seeking possession of the let house

(a) is suffering financial hardship, and

(b) intends to alleviate that hardship by occupying the let house as the landlord's only or principal home for at least 3 months."

Hearing

4. A Hearing took place before the Tribunal on 13 November 2023 at Glasgow Tribunals Centre. Both Applicants were in attendance as was the Respondent and her husband. The Applicant was represented by Nicholas Nimmo of the Applicant's Representative.
5. The Tribunal noted that the issues to be determined at the Hearing were firstly whether or not the ground for eviction had been established and secondly whether or not it was reasonable to grant an order for possession of the Property.

Evidence of Peter Large (Applicant)

6. Mr Large told the Tribunal that he is 33 years old and lives at 0/1, 18 March Street, Glasgow G41 2PX ("March St"). He said that March St is a studio flat consisting of a kitchen, bedroom and small bathroom which includes a shower. He said March St required renovation when he and Ms Lander bought it. He said that the boiler is broken, the electrics are outdated and decoration is required. He said that he and Ms Lander also own the Property which they purchased 6/7 months before purchasing March St.
7. Mr Large told the Tribunal that he saw the Property advertised on Right Move. It was being sold by auction by Future Property Auctions (FPA"). He contacted FPA and was told that the Property was subject to a closing date in a few days' time. He said he asked to see a home report but none was available. He asked to view the Property and was told that was not possible. The advert stated that the Property was being sold "subject to a long term tenancy". Mr Large said he asked to see a copy of the tenancy agreement but it was not available. The advert stated "*excellent opportunity with full rental level of £800 (pcm)*". Mr Large said that he thought he could purchase the Property and evict the tenant in due course. Mr Large said he contacted his parents who had said they would help Mr Large and Ms Lander "get on the property ladder".

8. Mr Large said that he and Ms Lander offered £110,000 for the Property and paid a deposit of £13,000. He said that negotiations then took place with the seller and the price was reduced to £90,000. The Tribunal asked why the Seller agreed to a price reduction. Mr Large said that the nature of the tenancy had come to light. He said that the only documentation available regarding the tenancy was the entry in the rent register which indicated that the tenancy was a pre-1989 tenancy. He said that he knew about the nature of the tenancy after the deposit was paid but before the purchase completed.
9. Mr Large was referred to production 46 which is the advert for the Property which refers to the long term tenancy and to "*full rental level of £800 (pcm)*". He said that the rent was £355 at the date of purchase and has now been increased to £424. He said that the entry in the rent register states that the rent is £508 per year. Mr Large said that he complained to FPA about the advert and took his complaint to the Property Ombudsman who upheld the complaint and awarded £4000 by way of compensation. Mr Large was referred to the decision of the Ombudsman which is production 41.
10. Mr Large told the Tribunal that at the time of purchasing the Property he understood there was a regulated tenancy in place but he did not fully understand the implications of that. He said that he had taken legal advice before concluding the purchase, but that the full implications of a regulated tenancy were either not known, or not made clear to him. He said that following the purchase his plan was to allow the tenancy to run a decent notice period while gaining rental income of £800 per month. He said that he and Ms Lander wished to live in the Property as their home and to start a family. He said he thought he could evict the tenant. He said he had told FPA that was the plan.
11. Mr Large was referred to production 5 which is a letter from Rupert and Trudy Large regarding a loan to buy the Property and a second loan to buy March St. He said that before purchasing March St he and Ms Lander were lodging with friends. He said that living at March St was meant to be a temporary solution. He said that March St is inadequate for the future plans of himself and Ms Lander. Mr Large told the Tribunal that his parents had retired in 2018 / 2019 and he required to repay to them the two loans at some point. He said that he had applied for a mortgage for March St without success. He said that if he and Ms Lander had been able to live at the Property they would have applied for a mortgage for the full value and repaid the £90,000 loan to his parents. Mr Large said that he was in full time employment when he purchased the Property.
12. Mr Large was referred to production 7 which summarises the loans from Rupert and Trudy Large which total £154,782. Mr Large said that repayments towards the loans had been made between July 2019 and May 2021 but no further

payments had been made since then. He said that he is not presently in employment. He said he had worked as a cheese monger until August 2023. He said that Ms Lander is a self-employed cleaner. He said that he and Ms Lander wish to evict the Respondent from the Property to alleviate financial hardship.

13. Mr Large was referred to production 1 which shows a breakdown of the monthly income and expenditure of himself and Ms Lander as at May 2023. He noted that he no longer receives the salary shown. He said that in October 2023 he received £230 from Universal Credit. He said that the amount received from them varies from month to month. He said that the figures in production 1 make no provision for the cost of repairs at the Property. Production 1 includes reference to a “bounce back” loan repayment. He said this loan was made in 2020 to a partnership formed by himself and Ms Lander which is now defunct. He said that the sum to be repaid is £13,300. The Tribunal noted the productions lodged regarding a company called Future Practical Ltd. Mr Large said that he and Ms Lander are directors of the company. He said the company was set up in 2021 to provide design services. He said that the company does not generate any income. He said that the “studio rent” referred to in production 1 is rent for a small workspace. The Tribunal noted that production 1 indicated that the monthly income of the Applicant is £1529 and their outgoings are £2585 leaving a monthly deficit of circa £1000.
14. Mr Large was referred to productions 8, 9 and 10 which show the costs incurred for obtaining an EICR, a gas safety certificate and for landlord registration. Each of these relate to the Property. Mr Large was referred to productions 23 and 24 which show the monthly cost of mobile phone contracts and to production 26 which showed the bill for broadband at March St.
15. Mr Large was referred to production 25 and 48 which showed a debt due to Octopus energy of £769.96 in June 2023 which had risen to £1030.08 by September 2023. Mr Large was referred to production 4 which showed a debt due by him to Nat West of £1967.68 as at May 2023 and to production 44 which was bank statements addressed to Ms Lander showed a debt due of £2649.17 as at 31 May 2023 and £2606.69 as at 3 July 2023.
16. Mr Large was referred to production 11 which showed a balance of £3612.51 being due for factor’s fees relating to the Property as at 1 March 2023. He said that the debt had built up over time and that a payment plan was now in place. He was referred to production 22 which is a factor bill for March St of £75.44. Mr Large was referred to productions 30, 34 and 35 which showed the factor fees for the Property were £3474.98 as at 11 April 2023 and that a court decree had been granted regarding the debt.

17. Mr Large was referred to production 29 which showed council tax for March St was in arrears of £710.63 as at 23 April 2023. He said that debt remained outstanding and further arrears had accrued. He was referred to production 38 which indicated that a summary warrant had been issued for non-payment of council tax of £867.72 regarding March St.
18. Mr Large was referred to production 36 which was a default notice from Santander regarding an overdrawn balance of £532.94. Mr Large was referred to production 37 which was a letter from Moorcroft debt recovery regarding a debt of £962.73 due to NatWest for a credit card. He said that debt remained outstanding.
19. Mr Large was referred to production 31 which indicated that Ms Lander owes HMRC £5562.58 and to production 32 which indicated that Mr Large owes HMRC £4150.27. He said that debt related to a period during which he was self-employed. He said he had not paid anything towards that debt. Mr Large was referred to production 43 which indicated a debt due by Ms Lander to DWP of £2580.09 regarding Universal Credit advance payments.
20. Mr Large was referred to production 39 which summarised the debts owed by the Applicant excluding the loans made by Rupert and Trudy Large. He said that the sum due to Octopus energy had increased to £1030 and the sum due for the business loan had increased by £900.
21. The Tribunal noted that the debts totalled circa £30,000 with a further £154,782 owed to Rupert and Trudy Large. Production 42 is a home report for March St which indicated a value of £85,000. A desktop valuation for the Property had also been lodged which indicated a value of £95,000 - £110,000. Mr Large said that he could not sell the Property due to the nature of the tenancy. He said that he was taking active steps to sell March St but if March St was sold, the Applicant would be homeless. He said that he and Ms Lander could not afford a private rented property and they would not be eligible for social housing. He said that if an order for possession of the Property was granted, the Applicant would live in the Property indefinitely.

Evidence of Jean Thomson (Respondent)

22. Mrs Thomson told the Tribunal that she moved into the Property in 1985. She said that the Property had changed ownership 5 times during her tenancy. She said she had tried to obtain a copy of a tenancy agreement but she understood that there may never have been one and that she would only have been given a rent book. She said she no longer had the rent book. She said that she lived in the Property with her husband and her daughter aged 34. She said that her

daughter would require to live with them in the long term for reasons of emotional support. She said her daughter has a dog. She said that her son lives reasonably close by and that her grandson stays overnight at the Property 2 nights each week. She said that her grandson's school is close by. She said that her husband is aged 65 and is employed as a refuse collector. She said that she is age 63 and is employed as a carer on a zero hours contract. She said that Mr Thomson works in Dalmarnock and that she works in the Cambuslang and Rutherglen area. Her daughter works in Clarkston. She said that each place of work is accessible from the Property by public transport.

23. Mrs Thomson told the Tribunal that she had inquired about private rented properties but the market was very competitive for 3 bedroom properties. She said she had taken advice from Shelter and had been in touch with Cathcart Housing Association and Wheatley Homes Glasgow. She said that the social housing providers would not put her family on a list for housing as they are currently adequately housed in private accommodation. She said the family would not be placed on a list until they are homeless. She said that she had been told that the family may be placed in homeless accommodation which, she had been advised, could be anywhere in Glasgow or, indeed, outwith Glasgow, and would not necessarily be housed together.

24. Mr Nimmo put a number of questions to Mrs Thomson. She said she was a unaware of the need for roof works at the Property but she was aware there are outstanding factor fees. She said at the time of taking the tenancy she understood it was a "tenancy for life" that could be passed to her daughter. She acknowledged she had not lodged any productions such as payslips. Mr Nimmo asked Mrs Thomson if an order for eviction would speed up the process of her being rehoused. She said she did not think that was the case as she does not have any disabilities or children under the age of 16.

Submission for the Applicant

25. Mr Nimmo submitted that the Applicant own the Property and sought an order under section 11 of the 1984 Act based on case 8A. He said that the documents lodged indicate that the Applicant has significant debts which may increase if roof works are required at the Property. He noted that the Respondent's position is not vouched and noted there is no such thing as a "tenancy for life". He said that the Applicant purchased the Property on the basis of misleading information from FPA. He said that if the Applicant sells March St they will become homeless and still have a substantial level of debt. He said that the Applicant fulfils the requirements of case 8A. He said that the Applicant seeks the opportunity to live in the Property and raise a family.

Submission by the Respondent

26. Mrs Thomson queried why her family required to remove to make room for the Applicant to start a family. She queried why the Applicant did not sell the Property and continue to live in March St as that would avoid her family being evicted.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Respondent is tenant of the Property in terms of a tenancy regulated by the 1984 Act.
2. The Respondent has resided in the Property since 1985.
3. The Applicant acquired title to the Property on 21 June 2019.
4. The Applicant acquired title to March St on 13 December 2019.
5. A Notice to Quit was served on the Respondent on 8 February 2023.
6. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 16 February 2023.
7. Rupert and Trudy Large advanced loans to the Applicant to facilitate the purchase of the Property and March St. the balance due is £154,782.
8. The Applicant has a number of other debts which total approximately £30,000.
9. The monthly outgoings of the Applicant exceed their monthly income by approximately £1000 per month.
10. The Applicant is suffering financial hardship.
11. The Applicant seeks to alleviate that hardship by occupying the Property.
12. The Respondent, her husband and her daughter have their place of employment in close proximity to the Property.

Findings in Fact and Law

The Tribunal made the following findings in fact and law :

1. It is not reasonable to grant an order for possession of the Property.

Reasons for the Decision

27. The Applicant accepted that the Respondent's tenancy of the Property is regulated by the 1984 Act. In terms of section 11 of the 1984 Act, the Tribunal shall not make an order for possession of a dwelling-house which is for the time being let on a protected tenancy or subject to a statutory tenancy unless the Tribunal considers it reasonable to make such an order and either (a) the Tribunal is satisfied that suitable alternative accommodation is available for the tenant or will be available for him when the order in question takes effect, or (b) the circumstances are as specified in any of the cases in Part I or II of Schedule 2 of the 1984 Act. The ground for eviction in the Notice to Quit was that set out in schedule 2 para 8A of the 1984 Act which is that the landlord is suffering financial hardship and intends to alleviate that hardship by occupying the let house as the landlord's only or principal home for at least 3 months. The Notice to Quit served on the Respondent is dated 6 February 2023 and was served on 8 February 2023. The end of the notice period is stated to be 8 March 2023. In terms of section 112 of the 1984 Act the minimum period of notice is 4 weeks. The requisite amount of notice was therefore given.
28. The Applicant lodged a number of productions in order to provide a clear explanation of their financial position. In summary, their monthly outgoings exceed their monthly income by circa £1000. They have debts totalling circa £185,000 and own two properties with an estimated joint value of circa £185,000. Mr Large is not in employment. Ms Lander is a self-employed cleaner. Mrs Thomson did not dispute the financial information placed before the Tribunal. Mr Large told the Tribunal that since purchasing the Property the Applicant's intention had been to obtain vacant possession at some stage and occupy the Property. Selling one of the properties owned by the Applicant would go some way towards alleviating the financial position of the Applicant. The Tribunal found that the ground for eviction had been established.
29. As regards the question of reasonableness, the Tribunal has a judicial duty to consider the whole circumstances in which the application is made. Some factors may have little or no weight, others may be decisive but it is wrong for the Tribunal to exclude from consideration matters which they ought to take into account.
30. The Tribunal considered all of the evidence placed before it and as summarised in this Decision. The Tribunal took into account the Applicant's desire to sell March St and occupy the Property where they hoped to start a family. The Tribunal must consider the position as at the time the application is before them

for determination. At this stage the Applicant do not have a family. The Applicant's debts are such that if they sell March St, obtain possession of the Property and move in to the Property they will still have debts in the region of £100,000 and outgoings that exceed their monthly income by £1000 per month. The Applicant expressed the desire to obtain a mortgage over the Property if they obtained possession but told the Tribunal they had been unsuccessful in obtaining a mortgage over March St. The financial position of the Applicant is such that selling March St and moving into the Property may not resolve their financial difficulties. Were creditors to take action against them, their ownership of the Property may be at risk.

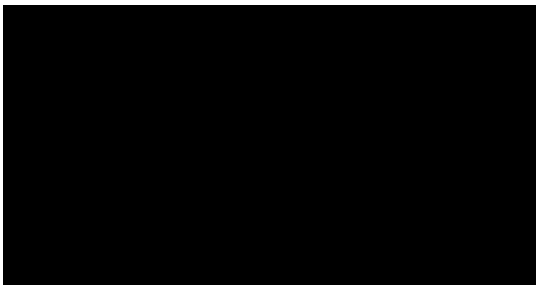
31. Having considered all of the circumstances, the Tribunal determined that it is not reasonable to issue an eviction order. In reaching its decision the Tribunal attached particular weight to the uncertainty of the Applicant's financial position, the length of time the Respondent has occupied the Property, the age of the Respondent and her husband, the proximity of the Property to the place of work of the Respondent, her husband and her daughter and the nature of the tenancy which provided the Respondent with a degree of security of tenure in that the ground for eviction relied upon was not available to the Applicant until the amendment of the 1984 Act by the 2022 Act.

Decision

The Tribunal determined not to grant an order for possession of the Property.

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

Date : 20 November 2023