



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/23/1156

Re: Property at 302 Main Street, Rutherglen, G73 3AE (“the Property”)

Parties:

Mrs Stefanie Moore, 21 Booth Road, Banbury, Oxford, OX16 1EG (“the Applicant”)

Miss Gillian Gorman, Mr George Stewart, 302 Main Street, Rutherglen, G73 3AE (“the Respondents”)

Tribunal Members:

Graham Harding (Legal Member) and Eileen Shand (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for possession of the property under Section 33 of the Housing (Scotland) Act 1988

Background

1. By application dated 7 April 2023 the Applicant’s representatives, Smart Move Estate Agents (Scotland) Limited, Glasgow, applied to the Tribunal for an order for possession of the property under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”) in respect of the Respondents’ tenancy of the property. The Applicant’s representatives submitted a copy of the tenancy agreement with Form AT5 together with a Notice to Quit and Section 33 Notice with Certificates of Service and a Section 11 Notice in support of the application.
2. Following further correspondence between the Applicant’ representatives and the Tribunal administration by Notice of Acceptance dated 4 May 2023 a legal

member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 20 May 2023.
4. A CMD was held by teleconference on 22 June 2023. The Applicant did not attend but was represented by Mr George Reynolds from the Applicant’s representatives. Miss Gillian Gorman attended and was represented by her mother Ms Eleanor Gorman. Mr Stewart did not attend but his interests were also represented by Ms Eleanor Gorman. After some discussion the Tribunal considered it did not have sufficient information before it to make a decision and that although it was satisfied that procedurally the Applicant had met the requirements of Section 33 of the 1988 Act, in terms of the Coronavirus (Recovery and Reform) (Scotland) Act 2022 the Tribunal required to consider whether in the circumstances it was reasonable to grant the order sought. The Tribunal therefore determined to adjourn the proceedings to an evidential hearing. The Tribunal issued a Note of the CMD dated 22 June 2023 which is referred to for its terms.
5. By email dated 12 October 2023 the Respondent Miss Gillian Gorman requested a postponement of the hearing as she had been admitted to hospital. The Tribunal requested documentary evidence to support the application. By email dated 12 October the Applicant’s representative opposed the application. By a further email dated 12 October 2023 Miss Gorman submitted further written representations but did not submit the documentary evidence requested.

The Hearing

6. A Hearing was held by teleconference on 17 October 2023. The Applicant attended in person represented once again by Mr Reynolds. Miss Gorman also attended supported by her mother Ms Eleanor Gorman from a side room in hospital and Mr Stewart was also in attendance.
7. Mr Reynolds explained that at the beginning of 2023 the Applicant’s husband had lost his job in Banbury and had been required to find employment in London. He said that as a result the Applicant and her husband now wished to relocate to London. However, although house prices in London were continuing to rise, they were falling in Glasgow and this was adversely affecting the Applicant who needed to sell the property in order to purchase a new property in London. Mr Reynolds went on to say that the Applicant had also recently been told that she was going to be made redundant after it had become known that she intended to move to London. He went on to say that the Applicant had been trying to obtain possession of the property since January and the Respondents had been given until proceedings were raised

in April to remove from the property and it was therefore reasonable to grant the order.

8. In response to queries from the Tribunal the Applicant explained that a similar three-bedroom property to her home in Banbury would cost about £600000.00 in London. She said her home was worth £375000.00 to £400000.00 and was subject to a £70000.00 mortgage. She said she thought the property in Rutherglen was worth between £150000.00 and £170000.00 and that to purchase a suitable property in London it would be necessary to increase the mortgage and she had made enquiries in this regard. The Applicant went on to say that at present, her husband who was a bricklayer had to do a 150-mile round trip every day to work and leave home at 5.30 each morning and not return until 5.30 or 6.00 each evening. She said he had tried to find local jobs but none were available. She also said her husband had some health issues.
9. In response to some further queries from the Tribunal the Applicant said that she had not yet been served with a redundancy notice but expected to be given this in December. She also confirmed that she owned another one-bedroom flat in Paisley that was rented out but had not considered selling it as it would not realise sufficient funds to assist with the purchase of a property in London.
10. In response to a query from the Respondent, Mr Stewart, the Applicant confirmed she had purchased the property in Banbury in 2022 at a price of £450000.00 but that house prices there had fallen this year and that she had the house valued at between £375000.00 and £400000.00. She went on to say that she had not settled in Banbury and wanted to move back to London. She said she had experienced three family bereavements this year and thought it was ridiculous that she could not get her own property back.
11. Mr Stewart gave evidence on his own behalf and on behalf of Miss Gorman. He explained that the Respondents were looking for a property in the local area but had been unable to find a property that would meet their needs at a rent they could afford. He suggested that it might be reasonable for the Respondents to remain in the property until the property was sold rather than for it to be left empty. He also suggested that it could be marketed for sale with the Respondents as sitting tenants. He said that the Respondents were good tenants and always paid their rent. He said that he had not wanted to be unlawfully evicted. And that he would like to remain in the property but acknowledged that the Applicant may have some financial constraints.
12. Miss Gorman advised the Tribunal that she had been very ill and that she needed to be located close to her mother who was her carer and who also looked after her children when she was going in and out of hospital.

13. In response to a query from Mr Reynolds, Mr Stewart confirmed that the Respondents had not viewed any properties since being served with the Notice to Quit. Mr Stewart explained that there was limited availability either from the local authority and housing associations as well as the private sector but that if Mr Reynolds firm had any suitable properties for rent, he would be happy to look at them.
14. In response to a further query from Mr Reynolds, Mr Stewart confirmed that Miss Gorman had not submitted any medical records to the Tribunal despite it being suggested at the CMD that she may wish to do this. Mr Stewart explained that Miss Gorman had offered to submit her medical records but had not wished them to be disclosed to the Applicant or her representatives as they contained sensitive information. He said she was still willing to provide them to the Tribunal if required.
15. In response to a query from the Applicant, Mr Stewart said that although there were three-bedroom properties available for rent in the area the rent was double what they were paying and they could not afford them. He said they needed to find a property within their price range.
16. In response to a query from the Tribunal Miss Gorman advised the Tribunal that she had heard nothing further from the housing association. She said she was still on the list but nothing was available.
17. In response to a further query from the Tribunal the Applicant confirmed that she would not be prepared to market the property for sale with a sitting tenant and was of the view that a purchaser would want vacant possession.

Findings in Fact

18. The parties entered into a Short Assured Tenancy that commenced on 13 November 2017 at an initial rent of £575.00 per month.
19. The tenancy endured for a period of 12 months and thereafter continued from month to month until either party gave two months written notice.
20. The Respondents were served with a Notice to Quit and Section 33 Notice by Sheriff Officers on 5 January 2023.
21. The Respondents have remained in the property following expiry of the Notices on 13 March 2023.
22. The Applicant wishes to sell the property in order to raise capital to allow her and her husband to relocate to London.

23. The Applicant's husband is unable to find employment in Banbury and works in London. He currently has a daily commute of 150 miles and leaves home at 05.30 and does not return until about 18.00.
24. House prices in both Banbury and Glasgow have recently fallen but have continued to increase in London.
25. The Applicant may be made redundant in December.
26. The Applicant owns another property in Paisley which consists of one bedroom and is tenanted. If sold it would not realise sufficient funds to meet the Applicant's needs to purchase a property in London.
27. The Applicant is not prepared to market the property with sitting tenants.
28. The Respondents have two children a boy aged 7 and a girl aged 9. They attend a local primary school in Rutherglen.
29. The Respondent, Miss Gillian Gorman suffers from pyloric stenosis and requires frequent hospital treatment at Queen Elizabeth Hospital which is located some distance from the property.
30. Miss Gorman's mother Ms Eleanor Gorman is Miss Gorman's carer. She lives about five minutes by car from the property and looks after Miss Gorman and the children.
31. The Respondents have not physically viewed any properties since being given the Notice to Quit.
32. The Respondents have viewed properties online but have not found any that meet their criteria at a price they can afford.
33. The Respondents are on the Local Authority and local housing associations waiting lists but no properties are currently available.

Reasons for Decision

34. The Tribunal was satisfied from the written submissions and documents together with the oral submissions that the parties entered into a Short Assured Tenancy that commenced on 13 November 2017 at a rent of £575.00 per month and endured for 12 months and from month to month thereafter. The Tribunal was also satisfied that the rent was subsequently increased by £20.00 per month. The Tribunal was also satisfied that the Respondents had been properly served with a Notice to Quit and Section 33 Notice by Sheriff Officers on 5 January 2023 and that South Lanarkshire Council had been given notice of the proceedings by way of a Section 11 Notice.

35. Prior to the Coronavirus (Scotland) 2020 and the Coronavirus (Recovery and Reform) (Scotland) Act 2022 the Tribunal would have granted an order for possession on being satisfied that the terms of Section 33 had been met. However, in terms of the foregoing legislation the Tribunal now requires to determine that it is reasonable in the circumstances that an order for possession should be granted. In reaching its decision the Tribunal accepted that the evidence given by both the Applicant and the Respondents was credible and reliable. Both parties' reasons for wishing the application to either be granted or refused were compelling and it is fair to say that the Tribunal considered that this was an application that was quite finely balanced.
36. On the one hand the Applicant and her husband wished to return to live in London where the Applicant's husband had work and thus avoid a long daily commute. It also appeared that the Applicant might lose her job shortly and it might be easier for her to find employment in London. Because of the cost of housing in London the Applicant needed to raise capital from the sale of the property in Rutherglen and the property in Paisley would not realise sufficient funds. Furthermore, although the Applicant and her husband had only fairly recently moved to Banbury they had not settled there and having had some family bereavements wished to return to London.
37. On the other hand, the Respondents were settled in the property were not in arrears and their children attended the local primary school. Miss Gorman suffered from a serious illness and required the support of her mother who lived locally to help with her care and the care of the children when she was ill. The Respondents had looked for alternative properties and required a three-bedroom property to meet their needs. They had been unable to find a suitable property at a rent they could afford. The Respondents were on the local authority and local housing associations waiting lists but had not received any offer of accommodation.
38. Having carefully taken account of the competing interests of both parties the Tribunal was satisfied that it was reasonable to grant the order. The Tribunal considered it was reasonable that the Applicant and her husband should be able to relocate back to London where the Applicant's husband's work was and that in order to do so it was necessary to realise capital from the sale of the property to fund the purchase of an equivalent property in London. The Tribunal accepted that the Applicant would not wish to market the property with a sitting tenant as this would have an adverse effect on the value and marketability. The Tribunal also took account of the fact that any order granted by the Tribunal would not come into effect until 31 March 2024 due to the effect of the Cost of Living (Tenant Protection) (Scotland) Act 2022 and given that the Respondents had been looking for another property and were on the local authority and local housing associations waiting lists this period may give them time to find suitable alternative accommodation in the area. In reaching its decision the Tribunal fully considered Miss Gorman's health

issues and the needs of the children but was satisfied that on balance the order should be granted.

Decision

39. The Tribunal finds the Applicant entitled to an order for possession of the property and the removal of the Respondents from the property in terms of Section 33 of the Housing (Scotland) Act 1988.

40. The decision of the Tribunal 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.

G Harding

17 October 2023

Legal Member/Chair

Date