



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/EV/23/2711

Re: Property at 59 Torogay Street, Milton, Glasgow, G22 7RA (“the Property”)

Parties:

Mr Edward Tweedie, Mrs Elaine Tweedie, Suite 204 Old Embroidery Mill, Abbey Mill Business Centre, Paisley, PA1 1TJ (“the Applicants”)

Ms Mhairi Doherty, 59 Torogay Street, Milton, Glasgow, G22 7RA (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

BACKGROUND

1. By lease dated 7th March 2016 the Applicant let the Property to the Respondent.
2. The Respondent resides at the Property together with her long term partner, George McGeouch, and their 3 children, the children being aged 8 years, 12 years and 30 years of age.
3. The Respondent has, in fact, resided at the Property since 2012. At that time the lease was in the name of Mr McGeouch but in 2016 his lease was terminated and a new lease entered in to with the Respondent.
4. The 3 children all have autism. The eldest child, however, had lived independently for a period of time but is now back residing at the Property.

5. The Respondent has various health issues. The Respondent was severely affected by COVID from 2020 onwards and is suffering effects of long COVID. She has been diagnosed with emphysema.
6. The Respondent's partner, Mr McGeouch, has a long-term mental health condition.
7. The Applicants are the proprietors of the Property. They are proprietors of various other properties which are, or were previously, rented also.
8. The Applicants have received a formal demand from their mortgage lenders requiring repayment of all sums outstanding in relation to this Property and various other properties owned by the Applicants. The Applicants, as a result, are requiring to sell the properties to repay the lenders. If they do not do so, they may find their own home ends up being at risk.
9. The lease is a short assured tenancy, a notice in terms of Section 32 of the Housing (Scotland) Act 1988 ("the 1988 Act") having been served upon the Respondent prior to the lease being signed.
10. A notice in terms of Section 11 of the Homelessness etc. (Scotland) Act 2003 has been intimated to the Local Authority.
11. A Notice to Quit and a Notice in terms of s33 of the 1988 Act were served on the Respondent.
12. The period of notice having expired, the Applicants presented an application to the Tribunal seeking an order for eviction to enable them to obtain vacant possession of the Property with a view to it being sold to enable the mortgage to be repaid.

THE CASE MANAGEMENT DISCUSSION

13. The Applicants were represented by Mr John Greenfield of Manorcroft Properties, Paisley. The Applicant, Mr Tweedie, joined the teleconference also. The Respondent participated in the teleconference. She was supported by her partner, George McGeouch.
14. The factual position of both parties was outlined in line with the information in paragraphs 1 – 8 above.
15. The Applicants advised the Tribunal that they were unable to sell the property with sitting tenants as, due to the fact that the rent had never been increased since 2012, the rental income was too low to make the Property an attractive proposition for any investors wishing to purchase a property with a sitting tenant. As a result, the

Applicants were left with no alternative but to sell the Property to satisfy their debt to their lenders.

16. The Respondents accepted the rent had not been increased since 2012 and acknowledged the difficulties that was now creating from a practical point of view – ie accepting that the Applicants were unable to sell the Property with a sitting tenant given the current level of rental income.
17. The Respondent confirmed that the Property was a 2 bedroomed property. The Property was, therefore, too small for the family unit. The Respondent advised that, in fact, she requires a 4 bedroomed property for the family. She has already been attempting to engage with the local authority - the social work department, a welfare rights officer and the homelessness team – with a view to alternative accommodation being offered. Those efforts have not been successful to date though engagement with the welfare rights officer has resulted in all family members successfully claiming disability benefits.
18. The Parties had been in discussion between themselves in relation to the possibility of the Respondent purchasing the Property. The Respondent, however, has been unable to obtain appropriate finance to enable that to proceed. In that event, the Property does not have sufficient accommodation for the Respondent and her family.
19. The Respondent advised that she does have an active application with Glasgow City Council Housing in the hope that she will be offered suitable accommodation by the local authority but has been advised that given the current situation, any engagement will be with the Homelessness Team.
20. There was no dispute between the parties in relation to any of the submissions made to the Tribunal. The Respondents did not dispute that Mr and Mrs Tweedie have been requested by their lenders to make full repayment of the sums due by them. They did not dispute that the Property would need to be sold to enable that to happen.
21. The Applicants did not dispute the make up of the Respondent's family. The Applicant are aware of the long-term physical and mental health conditions and disabilities affecting all members of the family.
22. Having regard to the fact that no issues were in dispute between the parties, the Tribunal concluded that there was no need to assign a hearing to consider any matters further. In the circumstances, the Tribunal, after an adjournment to enable the Tribunal members to consider and discuss matters, granted an order for eviction.

23. The Tribunal considered whether it was reasonable to do so and concluded that it was.

FINDINGS IN FACT

24. The Tribunal found the following facts to be established:-
- a) By lease dated 7th March 2016 the Applicant let the Property to the Respondent.
 - b) The Respondent resides at the Property together with her long term partner, George McGeouch, and 3 children, the children being aged 8 years, 12 years and 30 years of age.
 - c) The Respondent has resided at the Property since 2012. At that time the lease was in the name of Mr McGeouch but in 2016 his lease was terminated and a new lease entered in to with the Respondent.
 - d) The 3 children all suffer from autism. The eldest child, however, had lived independently for a period of time but is now back residing at the Property.
 - e) The Respondent has various health issues. The Respondent was severely affected by COVID from 2020 onwards and is suffering effects of long COVID. She has been diagnosed with emphysema. She was absent from work for 19 months in the aftermath of COVID but is now back at her full-time work as a carer.
 - f) The Respondent's partner, Mr McGeouch, suffers from mental health issues.
 - g) The Applicants are the proprietors of the Property.
 - h) The Applicants have received a formal demand from their mortgage lenders requiring repayment of all sums outstanding in relation to this Property and various other properties owned by the Applicants. The Applicants, as a result, are requiring to sell the properties, including this one, to repay the lenders.
 - i) The lease is a short assured tenancy, a notice in terms of Section 32 of the 1988 Act.
 - j) A Notice to Quit and a notice in terms of s33 of the 1988 Act were served upon the Respondent.
 - k) A notice in terms of Section 11 of the Homelessness etc. (Scotland) Act 2003 has been intimated to the Local Authority.
 - l) The Property is not appropriate for the needs of the Respondent and her family. The Respondent requires a property with at least three, but preferably four, bedrooms. The current property is a terraced house and has not been adapted in any way to meet any particular needs of the Respondent and her family.
 - m) The Respondent has already been engaging with the local authority with a view to obtaining an offer of suitable alternative accommodation. She has also looked into getting another property in the private rented sector but rent levels are unaffordable for her.

- n) An eviction order is likely to assist the Respondent in her dealings with the local authority.
- o) The Applicants have received a formal demand from their lenders requiring repayment of all sums due. The Applicants require to sell the Property to make the necessary repayment.
- p) If the property is not sold it is likely to be repossessed by the lenders. In that event it is highly likely that the lenders would take steps to evict the Respondent to enable them to sell the Property as a heritable creditor in possession.
- q) In the circumstances, it is reasonable to grant an order for eviction.

REASONS FOR DECISION

25. The situation which has arisen to the Property and the parties is clearly unfortunate. It is clear that the parties have had a good relationship for many years. The Applicant advised that he had no difficulties with the Respondents and their rent is being paid on an ongoing basis. The Applicant advised they have been 'good tenants'. Similarly the Respondent confirmed that they had no difficulties with the Applicant who, it would appear, has been a good landlord, including to the extent of never increasing rent.
26. In considering the practicalities of the situation, however, it is clear that the Applicant is under significant financial pressure having received a formal demand for repayment of all sums due to the mortgage providers. The Applicant has considered selling the Property to an investor with a sitting tenant. That, however, has not been possible due to the insufficient rental income. The Applicant has considered selling the Property to the Respondent but that has not been possible due to the inability of the Respondent to secure funding for the purchase. In the circumstances the Applicant has had no alternative but to take steps to obtain vacant possession with a view to selling the Property to alleviate the financial pressure they are now under.
27. Given the mortgage lenders have made a formal demand for repayment, in the event the Property was not sold, it is highly likely – if not absolutely certain - that the mortgage would be “called up” by the mortgage company. In the event, the mortgage company would then be entitled to sell the Property as a heritable creditor in possession. The mortgage company would be entitled to raise tribunal proceedings to secure vacant possession to enable a sale to proceed. In such an event, any eviction would not be subject to the provisions of the Cost of Living (Tenant Protection) (Scotland) Act 2022. One way or another, therefore, it is inevitable that vacant possession will require to be obtained at some point – either by the Applicants or by the

company after they have called up the mortgage – with a view to the Property being sold. Delaying the process would serve no useful purpose.

28. From the point of view of the Respondent, she appreciated the position of the Applicants. There was no dispute that the Applicants are under significant financial pressure. There is no dispute that the rent has not been increased and, while that has obviously been to the benefit of the Applicant over a number of years, it has caused a practical difficulty now in that it is accepted the Property is not attractive to any investor who may be looking to purchase the Property with a sitting tenant.
29. Separately, the Respondent acknowledged that the Property is too small for her family and a larger property is required. Ideally, she would wish a 4 bedroomed property. She is not in a position to finance the purchase of such a property herself. It is likely that she will require to rely upon the local authority to provide housing for her family in the future.
30. The Respondent acknowledged that having an order for eviction will assist her in her dealings with the local authority and was likely to speed up the process of a tenancy of a property with appropriate accommodation for her family being offered to her.
31. The current application to the Tribunal is subject to the terms of the Cost of Living (Tenant Protection) (Scotland) Act 2022 and as a result, the eviction order which is being granted will not be able to be enforced for a number of months in any event. The Respondent acknowledged that that would provide time to hopefully enable alternative accommodation to be offered.
32. The Respondent, and her partner, Mr McGeouch, confirmed that if suitable accommodation is made available to them, they will vacate the property as quickly as possible thereafter, acknowledging the difficult position of the Applicants.
33. Having regard to the position of both parties, the Tribunal had little difficulty in concluding that it was, indeed, reasonable for an order for eviction to be granted for the benefit of both parties.

DECISION

The Tribunal granted an eviction order against the Respondent for possession of the Property by the Applicants under section 33 of the Housing (Scotland) Act 1988.

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.



27 November 2023

Legal Member/Chair

Date