



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/23/2671

Re: Property at 80 Barton Terrace, Fauldhouse, EH47 9LL (“the Property”)

Parties:

Mr Kevin Kirwan, Anne Kirwan, 200 Ashcroft, Raheny, Dublin, D05 KX60, Ireland (“the Applicant”)

Christine Rickard, 80 Barton Terrace, Fauldhouse, EH47 9LL (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application is granted and the order for recovery and possession should be granted in favour of the Applicants. The Tribunal superseded the Order until 15th April 2024.

Background

1. This is an application in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The Applicant is seeking an order for recovery of possession in terms of section 33 of the Act.
2. On 3rd October 2023, all parties were written to with the date for the Case Management Discussion (“CMD”) of 8th November 2023 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 24th October 2023.

3. On 5th October 2023, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by letterbox service. This was evidenced by Certificate of Intimation dated 5th October 2023.
4. On 3rd November 2023, the Respondent emailed the Housing and Property Chamber requesting a postponement to allow her to instruct Shelter Scotland who told her that they needed more notice of the CMD in order for them to represent her at it. She also said that she was a kinship carer. Both her and her granddaughter have health conditions. She is liaising with her local authority housing department. Her housing officer had hoped that she would be rehoused in the new year.
5. On 6th November 2023, the Applicants' solicitor emailed the Housing and Property Chamber opposing the postponement. The solicitor noted that this case was caught by the Cost of Living (Tenant Protection)(Scotland) Act 2022 which means that any order cannot be enforced before 31st March 2024.
6. The Tribunal granted the postponement request to allow representation to be sought by the Respondent. On 21st December 2023, all parties were written to with the date for the Case Management Discussion ("CMD") of 7th February 2024 at 10am by teleconferencing.

Case Management Discussion

7. A CMD was held 7th February 2024 at 10am by teleconferencing. The Applicants were not present but were represented by Ms Shabeilla Saddiq, Associate Solicitor, TCH Law. The Respondent was present and represented herself.
8. Ms Saddiq said that the Applicants position remains the same. They are required to sell the Property as a result of the decision of the Irish Court. The Property is subject to an interest only mortgage. The current mortgage period finishes in 2025. There is £52659.31 outstanding. It is hoped that this will be paid from the proceeds of the sale. Any outstanding funds will be allocated as per the Irish court document. Ms Saddiq said that there are no outstanding rent arrears or any other issues with the tenancy.
9. The Respondent said that she had contacted Shelter Scotland but that they were unable to represent her. She has spoken to Citizens Advice Bureau and her local Housing Officer. She has health issues and a 5 year old granddaughter whom she is a kinship carer. She is not opposing an order being granted. She would like to extend the period in the Property to the end of April 2024. Her Housing Officer is looking to rehouse her with medical points if possible. She has recently been given full medical points. Her local authority have said that they will have her granddaughter allocated a taxi service to transport her to school for the last term. The Respondent is willing to move anywhere in the local authority area which would mean a change of school for her granddaughter after the end of the school year. If she had to the end of April

2024 she would be able to get assistance from her family to pack the Property as she would struggle on her own with her health conditions.

10. The Tribunal consider superseding the Order. If it was superseded by to 15th April 2024 then the 14 days notice would expire at the end of April 2024. This is not wholly prejudicial to the Applicants as it is only 15 days later than 31st March 2024. The Tribunal was satisfied that it was appropriate to grant an order for eviction.

Findings and reason for decision

11. The parties entered into a Short Assured Tenancy on 4th December 2011 for a 6 month period. An AT5 was signed by both parties on the same date as the lease. The rent payments of £400 per month.
12. The Housing and Property Chamber received an Application on 7th August 2023.
13. The Applicants require to sell the Property in terms of the Irish court document dated 16th May 2012.
14. The Respondent is not opposing an order being granted.
15. The Respondent has her 5 year old granddaughter living with her on a kinship carer basis.
16. The Respondent has been liaising with her local authority with regards to being rehoused.
17. The rent for the Property is up to date. There are no issues with the tenancy.
18. The Tribunal was satisfied that there were no other issues of reasonableness before them and that the notices had been served in an appropriate manner and that a Short Assured Tenancy had been entered into by the parties. Given this the Tribunal was satisfied all appropriate paperwork had been served the Order for repossession was granted.

Decision

19. The Applicant is entitled to an Order of for recovery of possession. The Order will be superseded until 15th April 2024.

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.



7th February 2024

Legal Member/Chair

Date