



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 (“the 1988 Act”)

Chamber Ref: FTS/HPC/EV/23/3214

Re: Property at 40 Kenilworth Rise, Dedridge, Livingston, EH54 6JJ (“the Property”)

Parties:

Mrs Avril Boyd, 60 Dublin Street, Edinburgh, EH3 6NP (“the Applicant”)

Mr Simon Jamieson, Jill Jamieson, 40 Kenilworth Rise, Dedridge, Livingston, EH54 6JJ (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be made in favour of the Applicant.

1. Background

- 1.1 This is an application initially made under rule 65 of the Chamber Rules. Following inquiry by the Tribunal, an amended application was received to proceed under rule 66 as the Applicant sought an order for possession of the property which had been let on a short assured tenancy agreement, terminated under section 33 of the 1988 Act.
- 1.2 The application was accompanied by copies of the written tenancy agreement between the parties, notices to quit served and notices under section 33 of the 1988 Act given to the Respondents.
- 1.3 No written representations had been received from the Respondents in advance of the Case Management Discussion.

2. The Case Management Discussion

- 2.1 The Case Management Discussion took place on 25 January 2024 by teleconference. The Applicant was represented by Mr David Gray, solicitor. The Respondents were personally present.
- 2.2 The Tribunal confirmed with both parties that the written material accompanying the application had been considered. Subject to anything the Respondents had to say, the live issue appeared to be whether it was reasonable to grant the application.
- 2.3 The Applicant's representative confirmed that the application was insisted upon. The Applicant was 79 years of age. She had taken the decision to sell the property as she required to fund repairs to her own home. She owned one other rental property, believed to be tenanted. Her income comprised of state pension, a small private pension and rental income. The Applicant's representative did not have any details as to the precise nature of the repairs or of the other rental property and its occupant(s).
- 2.4 The Respondents confirmed that they resided at the property with their three children, aged 21, 16 and 8. They had resided there since 2004. Their eldest child was autistic and the Second Named Respondent provided his care. He received disability benefits and was not in work or further education. The younger two children were both in full time education. The First Named Respondent was self employed, having recently started a business supplying and fitting garage doors. The Respondents' income was approximately £1700.00 per month. They had applied to West Lothian Council for rehousing and had been afforded the highest priority on the mainstream housing list however, no suitable properties had yet become available. They required a four bedroom property as the children all required their own rooms. Given their income, they did not believe the private sector was affordable with rental prices substantially higher than their current property. They required to remain within Livingston as the Second Named Respondent also provided care to her elderly father. The First Named Respondent had also approached charities catering to ex-members of the armed forces for assistance. The local authority had advised that no steps would be taken to treat the Respondents as homeless or otherwise under the Housing (Scotland) Act 1987 until the present application had been determined by the Tribunal. The Respondents were not aware of the Applicant's need to carry out repairs to her own home and believed that she owned more properties.
- 2.5 The Applicant's representative advised that he believed that the Respondents would continue to be protected under the provisions of the

Cost of Living (Tenant Protection) (Scotland) Act 2022 (“the 2022 Act”) beyond 31 March 2024. If enforcement of any order were to be delayed for six months, this would provide an opportunity for housing to be obtained. Following a brief adjournment to consider parties respective positions and the 2022 Act, the Tribunal indicated that it was minded to grant the order but that the Tribunal would order a delay in enforcement of six months from the 25 January 2024.

3. Reasons For Decision

- 3.1 The Applicant had served valid notice to quit and valid notice under section 33 of the Housing (Scotland) Act 1988. The only issue for the Tribunal to consider was whether it was reasonable to grant the order sought. Given that there was, essentially, no factual dispute between the parties, the Tribunal considered that it could accept the parties’ positions as stated at the Case Management Discussion and that little would be achieved by fixing a hearing. Accordingly, the application could be determined.
- 3.2 The Tribunal approached the issue of reasonableness in accordance with the case of *Barclay v Hannah* 1947 SC 245 whereby the Tribunal was under a duty to consider the whole facts and circumstances in which the application was made. The Tribunal recognised that both parties had somewhat difficult circumstances in that the Applicant no longer wished to act as landlord of the property and required to sell to fund repairs to her home. These circumstances were particularly relevant given her advancing years. Alternatively, the Respondents had lived at the property for 20 years. They appeared to have a legitimate difficulty in sourcing alternative accommodation. It was within the Tribunal’s knowledge that the local authority may not offer any assistance under part II of the Housing (Scotland) Act 1987 to the Respondents until the present application was determined, albeit, should an order be made, there was a reasonable prospect of the local authority owing a duty to them to ensure accommodation did not cease to become available.
- 3.3 The Tribunal was not aware of any extension to the moratorium on enforcement of orders for recovery of possession beyond 31 March 2024. There did not appear be any mechanism by which the current relevant provision in the 2022 Act could be extended, with further primary legislation being needed. Accordingly, the Tribunal considered that it would be reasonable to grant the order sought but only with a significant delay in enforcement to allow for the Respondents to receive assistance from the local authority and obtain alternative accommodation. The Tribunal

considered a delay of 6 months from 25 January 2024 to be appropriate in the circumstances.

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/Chair

Date 25th January 2024