



**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/23/2503

**Re: Property at 3/2 263 Onslow Drive, Dennistoun, Glasgow, G31 2QG (“the
Property”)**

Parties:

**Mr Hunter Bryce, Unit 13, 2222 Clifford Street, Coogee, Sydney, NSW,
Australia, 2034, Australia (“the Applicant”)**

**Fi Sutherland, 3/2 263 Onslow Drive, Dennistoun, Glasgow, G31 2QG (“the
Respondent”)**

Tribunal Members:

Neil Kinnear (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

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

Background

This was an application dated 26th July 2023 and brought in terms of Rule 66 (Application for order for possession upon termination of a short assured tenancy) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant provided with his application copies of a short assured tenancy agreement, form AT5, notice to quit, section 33 notice, Section 11 notice, and relevant proof of service.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 28th September 2023, and the Tribunal was provided with the execution of service.

Both parties submitted written representations in advance of the Case Management Discussion.

A Case Management Discussion was held at 14:00 on 2nd November 2023 by Tele-Conference. The Applicant did not participate but listened to proceedings, and was represented by Mr Gray, solicitor. The Respondent participated and was not represented.

The Respondent confirmed that she took no issue with the legal procedures followed by the Applicant. She accepted that all the paperwork had been correctly prepared. However, the Respondent's position was that it was not reasonable for the Tribunal to grant the order sought due to her circumstances.

The Respondent is near the age of retirement and had lived in the Property for a considerable number of years. Moving away would distress her. She had made enquiries about alternative accommodation but had found there was nothing available for her. The Respondent would suffer hardship if the order was granted.

Mr Gray explained that this was the only Property which the Applicant rented out. He resides in Australia. He now suffers from serious ill-health which restricts his movements. For that reason, he needed to move out of his current accommodation and purchase something more suitable. He required to sell the Property in order to do that. In those circumstances it was reasonable that the Tribunal grant the order sought.

The only issue between the parties was as to the reasonableness or otherwise of the Tribunal granting the order sought. That is a question left to the discretion of the Tribunal, which the Tribunal required to hear evidence upon in order for it to resolve.

Due to his distant location and his health conditions, the Tribunal agreed to Mr Gray's suggestion that he submit an affidavit from the Applicant as his evidence regarding his circumstances.

The Tribunal noted that the Applicant had already submitted much of the information about that, which he might simply refer to in his affidavit. The Tribunal asked that he also confirm if he rented or owned his current accommodation, and whether or not he had sufficient finance to purchase a more suitable property for himself without the proceeds of sale of the Property.

The Tribunal also needed him to explain in his affidavit the consequences for him if the Tribunal did not grant the order sought.

The Tribunal needed to hear from the Respondent in more detail regarding her circumstances and the impact upon her if the Tribunal granted the order sought.

For those reasons the Tribunal set a Hearing and advised the parties about the procedures involved in that. The parties and the Tribunal agreed that a face to face in person hearing should take place, but that the Applicant provide his evidence by way of sworn affidavit for the reasons earlier noted.

Both parties submitted written representations in advance of the Hearing.

The Hearing

A Hearing was held at 10:00 on 20th February 2024 at Glasgow Tribunals Centre. The Applicant did not participate and was represented by Mr Runciman, solicitor. The Respondent participated and was not represented. Her friend and colleague Miss Adrimi accompanied her as a supporter.

The Tribunal heard evidence from the Applicant's parents, William and Christine Bryce as well as allowing the evidence of the Applicant himself to be given by way of a detailed affidavit. The Tribunal also heard evidence from the Respondent.

As a result of discussions between the parties in the course of, and after, each side had led evidence, the Respondent accepted that the Applicant had good grounds to wish to sell the Property and did not oppose the order sought for that reason. However, she required sufficient time to obtain alternative accommodation, whether that be by obtaining a private let herself, or in the event that she was unsuccessful in doing so, by obtaining public sector accommodation either from the local authority or from a local housing association.

Mr Runciman and Mr and Mrs Bryce confirmed after a short adjournment that the Applicant was sympathetic to the Respondent's situation and was content with a proposed delay in enforcement. They advised that the Respondent had been a responsible and good tenant of the Property.

Mr Runciman invited the Tribunal with reference to the application and papers to grant the order sought.

Parties were agreed that the order sought should not be enforced for a period of six months to allow the Respondent to obtain alternative accommodation. It was also agreed that the Respondent would allow the Applicant's selling agent access to the Property for the purpose of taking pictures and preparing a sales specification, but that viewing by prospective purchasers would not take place until after the six month period for enforcement had expired.

Statement of Reasons

In terms of Section 33 of the *Housing (Scotland) Act 1988* as amended, the Tribunal may make an order for possession of the house let on the tenancy if:

- (1) the short assured tenancy has reached its ish;
- (2) tacit relocation is not operating;

- (3) the landlord has given to the tenant notice stating that he requires possession of the house; and
- (4) it is reasonable to make an order for possession.

All of the above criteria had been satisfied in this application, and the Tribunal was satisfied in the circumstances explained by both parties that it was reasonable to grant an order for possession. As requested by the Respondent, and with the consent of the Applicant, the Tribunal provided that its order not be enforced for six months from the date hereof.

Decision

In these circumstances, the Tribunal made an order for possession of the house let on the tenancy as sought in this application.

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.

Neil Kinnear

20 February 2024

Legal Member/Chair

Date