



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 and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules)

Chamber Ref: FTS/HPC/EV/23/3895

Re: Property at 1 Waterloo Gardens, Kirkintilloch, Glasgow, G66 2HH (“the Property”)

Parties:

Mrs Sandra Cameron, 7 Allander Crescent, Gartcosh, Glasgow, G69 8DQ (“the Applicant”)

Mrs Anna Kolodziej and Mr Maciej Kolodziej, 1 Waterloo Gardens, Kirkintilloch, Glasgow, G66 2HH (“the Respondents”)

Tribunal Members:

Andrew Cowan (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to refuse the Application for an order for possession of the Property.

Background

1. By application dated 30th October 2023, the Applicant sought an order for possession of the Property under section 33 of the Housing (Scotland) Act 1988 (“the Act”) and in terms of rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
2. On 22nd January 2024 the application was accepted by the President of the First-tier Tribunal for Scotland Housing and Property Chamber and referred for determination by this tribunal.

3. A Case Management Discussion (“CMD”) was arranged to take place on 12th April 2024 and appropriate intimation of that hearing was given to all parties.
4. A Case Management Discussion (“CMD”) was arranged to take place on 12th April 2024 and appropriate intimation of that hearing was given to all parties. The CMD was conducted by remote telephone conference call, on 12th April 2024 at 14:00. The Applicant joined the call and gave evidence to the Tribunal. The First Respondent also joined the call and gave evidence to the Tribunal. The First Respondent confirmed that she was also representing the Second Respondent at the CMD.
5. The Second Respondent confirmed that her first language is Polish. She had noted that the tribunal had offered her the services of an interpreter, but she did not consider that such support was necessary.
6. The Second respondent confirmed that she had been able to take certain advice in relation to the Application from the Local Authority housing department. She accepted that the Notice to Quit and Section 33 notice had been served upon both Respondents. She did not seek to challenge the validity of those notices.
7. The application was accompanied by a copy of a Short Assured Tenancy Agreement dated 28th September 2012, an AT5 dated 18th September 2012, a Notice to Quit and Section 33 Notice dated 24th August 2023 together with Sheriff Officers’ execution of service dated 28th August 2023 and a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 served upon East Dunbartonshire Council by email dated 25th October 2023. The Tribunal was satisfied that all these documents and forms had been correctly and validly prepared in terms of the provisions of the Act, and procedures set out in the Act had been correctly followed and applied. The Respondents did not seek to challenge the service or the validity of the various notices.
8. Section 33 of the Housing (Scotland) Act 1988 provides that:
 - “the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied—
 - (a) that the short assured tenancy has reached its ish;
 - (b) that tacit relocation is not operating;
 - (d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and
 - (e) that it is reasonable to make an order for possession.”

9. Having regard to the terms of the tenancy agreement between the parties, together with the various notices which had been served upon the Applicant by the Respondent that the Tribunal made the following Findings in Fact:-
- a. The Respondents have occupied the Property as tenants from 29th March 2011.
 - b. The Applicant let the Property to the Respondents by virtue of a Short Assured Tenancy Agreement dated 28th September 2012.
 - c. An AT5 notice had been served upon both Respondents prior to the creation of the short assured tenancy in compliance with Section 32(2) of the Act.
 - d. The initial term of the tenancy between the parties was six months. The tenancy continued after the initial term by tacit relocation.
 - e. The tenancy between the parties is a Short Assured Tenancy as defined by section 32 of the Act.
 - f. The Applicant has served a notice to quit dated 24th August 2023 upon the Respondents. The Short Assured Tenancy has reached its end and tacit relocation is no longer operating.
 - g. The Applicant has served a notice dated 24th August 2023 upon the Respondents in compliance with section 33 (d) of the Act. The Applicant has accordingly given appropriate notice to the Respondents that she requires possession of the Property.
 - h. The Notice to Quit and Section 33 Notice both indicated to the Respondents that they were required to leave the Property by 29th October 2023. The Respondents have not vacated the Property by the date set out in the notices.
 - i. The Applicant has served a notice on the relevant local authority under section 11 of the Homelessness etc (Scotland) Act 2003.
 - j. The conditions specified in Section 33 (1) (a) (b) and (d) of the Act have been satisfied by the Applicant.
10. Accordingly, the only remaining issue for the Tribunal to determine was whether it is reasonable to grant a possession order as required by Section 33(1) (e) of the Act.
11. At the CMD, the Applicant confirmed that she had inherited the Property from her late mother. She had considered the Property as investment. She had engaged letting agents to identify tenants for the Property and to manage the tenancy on her behalf. The Applicant's husband had recently retired, and this

had prompted her to consider selling the Property to allow her to realise the capital value of the Property. The Property has no mortgage or other debt secured over it by the Applicant. The original rent due by the tenants in terms of the tenancy agreement between the parties was £425 per month. The Applicant had increased the rent on one occasion during the tenancy and the current rent was now £450 per month. The Applicant had known that she could have increased the rent further during the term of the tenancy but had chosen not to do so. The Applicant is aware that the rent currently charged under the tenancy agreement is significantly below the current market rent when compared to other similar sized properties in the locality of the Property. The Applicant has sought to ensure that the structure and fittings of the Property have been maintained throughout the Tenancy. She has continued to engage a letting agent to manage these matters on her behalf. The Letting agent makes a monthly charge to the Applicant in a sum equivalent to 10% of the rent for the Property.

12. The Applicant confirmed that, in general, the Respondents have been good tenants and have complied with the terms of the tenancy agreement. The Respondents have always paid the rent due timeously. The Applicant had become concerned when the Respondents had failed to report a fault with the bathroom floor of the Property. This had only been brought to the Applicant's attention following an inspection of the Property by the Applicant's letting agents. That event appeared to have settled the Applicant's intention to terminate the tenancy between the parties which would allow the Applicant to carry out some refurbishment work to the Property with a view to thereafter selling the Property. The sale of the Property would enable the Applicant to realise the capital value of the Property.
13. The Applicant indicated that her husband was now receiving a state pension and that she continued to work for thirty hours per week. The Applicant indicated that she wished to realise the value of the Property, through a sale, to supplement her savings and to provide her, and her husband, with better financial security in retirement.
14. The Applicant was sympathetic to the needs of the Respondents. She was aware that the letting agents had sought to identify suitable alternative accommodation for the Respondents. She understood that two alternative properties had been identified and offered to the Respondents by the letting agents, but the Respondent had declined to accept either of those offers.
15. The Applicant considers that it is reasonable for the Tribunal to grant an order of possession.

16. The First Respondent explained to the Tribunal that she and the second Respondent had occupied the Property from 2011. The Property is a one bedroom end terrace bungalow and was suitable for the needs of the Respondents. Both Respondents are employed full time and are paid the minimum wage. The joint income of the Respondents is approximately £3200 per month. They do not receive any benefits. The Respondents have 2 cats as pets in the Property.
17. The First Respondent explained that the Respondents are aware that the Applicant wishes them to leave the Property so that it can be sold. The Respondents want to be able to move on from the Property to allow the current tenancy to be ended. The Respondents have approached the local authority and local housing associations to seek alternative accommodation. They have been advised that they do not currently qualify for social housing as they have a current tenancy at the Property. If an order for possession is granted by the Tribunal, then the Respondents understand that they would then be considered as homeless by the local authority and that the local authority would have a duty to assist them with the provision of future housing. It has, however, been made clear to the Respondents by the local authority that, due to a lack of supply of suitable housing, there is little prospect of suitable housing being immediately available for them and they have been advised that it could be years before a suitable and permanent tenancy can be offered to them.
18. The First Respondent confirmed that the Respondents have been seeking alternative accommodation in the Private Sector. They have so far been unable to find any Property within the locality of the Property which they currently occupy and which is available at a similar rent to that which they are currently paying. They have also found it extremely difficult to identify any alternative private lets which will allow them to take occupation along with their pets.
19. The First Respondent confirmed that the Applicant's letting agents had offered them a tenancy in an alternative Property. The Applicants had viewed that Property. It was a ground floor flat. The proposed rent for that flat was at least £200 per month more than they are currently paying for the rent of the Property. The alternative property offered had less space than the Applicant's property. The Applicant's property has a small garden, and the Respondents are able to use a garden shed, which they use to store some of their belongings. The First Respondent believed that they had only been offered one alternative property by the Applicant's letting agents. They did not consider that alternative property to be affordable or suitable for their needs.
20. The Tribunal were satisfied that it had had sufficient information upon which to make a decision at the CMD, having heard evidence from the parties and having considered the written representations lodged. The Rules allow, at rule

17(4), for a decision to be made at a CMD as at a hearing before a full panel of the Tribunal.

21. In determining whether it is reasonable to grant an eviction order, the Tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties.
22. The Tribunal has a duty, in such cases, to consider the whole of the circumstances in which the application is made, it follows that anything that might dispose the Tribunal to grant the order or decline to grant the order will be relevant. This is confirmed by one of the leading English cases, *Cumming v Danson*, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in an oft-quoted passage:

“[I]n considering reasonableness ... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad commonsense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account”.
23. The Tribunal accepted that both the Applicant and the Respondent provided their evidence in an open and honest manner. The Tribunal accepted that the Applicant was honest and genuine in her statement that she intends to sell the property. The primary reason the Applicant wishes to sell the property is to allow her to prepare for retirement. The Tribunal however noted that the Applicant has not, yet, decided on the date that she will retire and that, in the meantime she remains in employment. The Tribunal further noted that the Applicant has chosen not to increase the rent of the Property to maximise the income generated by the tenancy between the parties. The Applicant had entered into a tenancy with the Respondent and has continued to fix a rent which is currently significantly below the market rent for properties of a similar type and location to the Property.
24. The Tribunal noted that the Respondents occupy the Property as their home and have done so for almost 13 years. The Respondents have no alternative accommodation available and, although they have made appropriate enquiries with all relevant local authorities and other housing providers, there is no suitable accommodation currently available to them within the general locality of the Property. If the possession order were to be granted the Respondents would be rendered homeless.
25. The Tribunal consider that the balance of reasonableness in this case is, weighted towards the Respondents. If a possession order is granted, then the Respondents will be homeless. The Respondents have made reasonable

efforts to secure alternative accommodation but have failed to identify any Property which is suitable for their needs, and which is affordable for them. The grant of a possession order will cause the Respondents significant upheaval and stress. The Tribunal consider that it would not be reasonable to allow the Applicant recover possession to sell the Property in the current circumstances. Whilst the Tribunal accept that the Applicant wishes to realise the value of the Property through selling the Property, she has not sought to maximise the rental income from the Property as an alternative to sale. The Applicant has not set out a compelling case which justifies the requirement for an immediate sale of the Property. As this is the reason the Applicant wishes to recover the Property the Tribunal are not satisfied that it would be a reasonable basis upon which to grant an order for possession.

26. The Tribunal does not find that it would be reasonable to grant the order on account of that fact.

27. The decision of the Tribunal is unanimous.

Decision

28. In all the circumstances, we refuse to grant an order against the Respondent for eviction from the Property 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.


A Cowan

Andrew Cowan

Legal Member/Chair

12th April 2024

Date

