



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/EV/23/4158

Re: Property at Flat 2/2, 4 Milovaig Street, Glasgow, G23 5JA (“the Property”)

Parties:

Mr Joshua Weir, 66 Spiers Road, Bearsden, Glasgow, G61 2LU (“the Applicant”)

Ms Colette Moran, Flat 2/2, 4 Milovaig Street, Glasgow, G23 5JA (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at Flat 2/2, 4 Milovaig Street, Glasgow, G23 5JA under Section 33 of the Housing (Scotland) Act 1988 be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with her goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 21 November 2023, the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for recovery of possession the Property in terms of Rule 66 the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a copy of a Short Assured tenancy dated 28 January 2015, an AT5 dated 28 January 2015, a Notice to Quit and Section 33 Notice dated 30 August 2023 together with a recorded delivery receipt and proof of delivery signed 31 August 2023, an estate agency agreement with Slater Hogg and Howison and a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 and an email to Glasgow City Council dated 21 November 2023.
3. On 7 March 2024, the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 17 April 2024. The Respondent required to lodge written submissions by 28 March 2024. This paperwork was served on the Respondent by Andrew Richardson, Sheriff Officer, Glasgow on 8 March 2024 and the Executions of Service were received by the Tribunal administration.

Case Management Discussion

4. The Tribunal proceeded with the CMD on 17 April 2024 by way of teleconference. The Applicant was represented by Ms Wooley from Bannatyne Kirkwood France & Co, Solicitors. There was no appearance by or on behalf of the Respondent despite the teleconference starting 5 minutes late. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in her absence.
5. The Tribunal had before it the Short Assured tenancy dated 28 January 2015, an AT5 dated 28 January 2015, a Notice to Quit and Section 33 Notice dated 30 August 2023 together with a recorded delivery receipt and proof of delivery dated 31 August 2023, an estate agency agreement with Slater Hogg and Howison and a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 and an email to Glasgow City Council dated 21 November 2023. The Tribunal noted the terms of these documents.
6. Ms Wooley asked the Tribunal to grant an eviction order as the Applicant needed to sell the Property as the mortgage costs were increasing. She referred to the agreement with Slater Hogg and Howison. She explained the Applicant was planning to migrate to Canada within the next year and needed the capital from the Property to set up home there. She submitted it was reasonable to evict.
7. She made further submissions that the Respondent lived with her partner and 2 or 3 children at the Property. Ms Wooley was not aware of any health issues in the family. The Respondent had indicated to the Applicant that she wanted to get a Council property as the Property was too small for the family and that in order to get rehoused the Respondent needed an Order from the Tribunal.

Findings in Fact

8. The Applicant entered into a Short Assured Tenancy Agreement dated 28 January 2015. The Respondent received an AT5 on 28 February 2015.
9. In terms of the Short Assured Tenancy Agreement the tenancy commenced on 4 February 2015 and continued until 4 February 2016. Parties agreed that the agreement would continue thereafter on a monthly basis until terminated.
10. The Applicant's solicitor served Notice to Quit and Notice in terms of Section 33 of the Housing (Scotland) Act 1988 both dated 30 August 2023 on the Respondent by way of recorded delivery. These were received by the Respondent on 31 August 2023. The Notice to Quit and the Section 33 Notice expired on 4 November 2023.
11. The Short Assured Tenancy reached its ish as at 4 November 2023.
12. *Tacit relocation* is not operating. The contractual Short Assured Tenancy had been brought to an end on 4 November 2023.
13. The Applicant wishes to sell the Property to release the capital. He intends to migrate to Canada and requires the capital to set up life there.
14. The Respondent lives in the Property with her partner and children. The Property is too small for the Respondent's family. The Respondent is seeking rehousing from the Local Authority.
15. The Applicant's solicitor served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on Glasgow City Council on 21 November 2023.

Reasons for Decision

16. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the oral submissions made by Ms Wooley at the CMD. The Tribunal concluded that the Applicant was entitled to seek repossession of the Property under Section 33 of the Housing (Scotland) Act 1988. There was a properly constituted Short Assured Tenancy with the Respondent. The Tribunal was satisfied that the statutory provisions of Section 33 of the Housing (Scotland) Act 1988 had been met namely that the Short Assured Tenancy had reached its ish (termination date); the Notice to Quit brought the contractual Short Assured

Tenancy to an end, and that the Applicant had given the Respondent notice in terms of Section 33(1)(d) of the Housing (Scotland) Act 1988 stating that possession of the property was required by 4 November 2023.

17. The terms of Section 33 of the Housing (Scotland) Act 1988 would normally entitle the Applicant to a right of mandatory repossession of the Property. In terms of Schedule 1, paragraph 3 (4) of the Coronavirus (Scotland) Act 2020 the Applicant also has to satisfy the Tribunal that it is reasonable to evict. In determining whether it is reasonable to grant the order the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal gave weight to the Applicant's position that the mortgage on the Property was increasing and that he needed to sell the Property to assist him migrating to Canada, The Tribunal considered that Ms Moran had not opposed the application. Whilst the Tribunal acknowledged that Ms Moran had a family it appeared to the Tribunal on the basis of the submissions from Ms Wooley which it accepted, that the Property was now too small for her family and that she was hoping to get rehoused by the Local Authority. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.

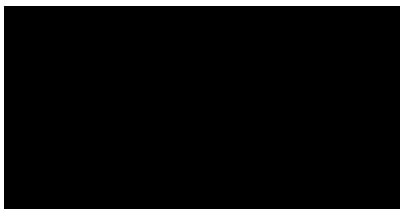
18. In the circumstances the Tribunal considered that in terms of Section 33 of the Housing (Scotland) Act 1988 as amended it was reasonable to grant an eviction order.

Decision

19. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

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.



17 April 2024

Legal Chair

Date