



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/23/2944

Re: Property at 117 Alexander Street, Coatbridge, ML5 3JH (“the Property”)

Parties:

Mr Mark Sexton, 28 Greenside Street, Coatbridge, ML5 2AX (“the Applicant”)

Mr Craig William Ross, 117 Alexander Street, Coatbridge, ML5 3JH (“the Respondent”)

Tribunal Members:

Andrew Upton (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted

Findings in Fact

1. The Applicant is the landlord, and the Respondent the tenant, of the Property under and in terms of a Short Assured Tenancy.
2. The Applicant has given valid notice to quit to the Respondent.
3. The Applicant has given valid notice under section 33 of the 1988 Act to the Respondent.
4. The Respondent has complied with all of his obligations under his tenancy agreement in full.
5. The Property is a one bedroom Property.
6. The Respondent has shared custody of his two year old daughter, who resides with him at the Property three days each week.
7. The Property is located a five minute drive from the home of the Respondent’s former partner and his daughter.
8. The Property is located a five minute drive from the Respondent’s parents’ home.

9. The Property is located a ten minute drive from the restaurant that the Respondent is employed at.
10. The Property is near to a park, which provides a good area for recreation with his daughter.
11. The Respondent has made enquiries with the local authority and privately but has been unable to find suitable alternative accommodation.
12. The Applicant's daughter suffers from fibromyalgia.
13. The Applicant's home has bedrooms on the first floor and a bathroom on the ground floor, making it unsuitable for his daughter's needs.
14. The Applicant's home has a shower over a bath, which his daughter finds difficult to access.
15. The Property is suitable for the Applicant's daughter's needs.
16. The Applicant intends to move his daughter into the Property after possession has been recovered.
17. The proximity in time between the Respondent giving notice of disrepair to the Applicant's letting agent and the eviction notices being served was a coincidence.
18. The Respondent will be eligible for alternative rented accommodation.
19. The Property, being a one bedroom flat, will be unsuitable for the Respondent's purposes as his daughter gets older.

Findings in Fact and Law

1. The Short Assured Tenancy between the parties has reached its end.
2. Tacit relocation is not operating in relation to the Short Assured Tenancy between the parties.
3. The Applicant has given notice to the Respondent stating that he requires possession of the Property.
4. In all of the circumstances, it is reasonable to make an order for possession of the Property.

Statement of Reasons

1. This Application called for a Hearing by teleconference call on 11 March 2024. The Applicant was present and also supported by his letting agent, Mr O'Hear. The Respondent was also present.
2. In this Application the Applicant seeks an eviction order under section 33 of the Housing (Scotland) Act 1988. The Application previously called for a Case Management Discussion on 12 December 2023, at which time the following matters were agreed:-
 - a. The Applicant has given valid notice to quit to the Respondent.
 - b. The Applicant has given valid notice under section 33 of the 1988 Act to the Respondent.
 - c. The Respondent has complied with all of his obligations under his tenancy agreement in full.
 - d. The Property is a one bedroom Property.
 - e. The Respondent has shared custody of his two year old daughter, who resides with him at the Property part of the week.

- f. The Property is located a five minute drive from the home of the Respondent's former partner and his daughter.
 - g. The Property is located a ten minute drive from the restaurant that the Respondent is employed at.
 - h. The Property is near to a park, which provides a good area for recreation with his daughter.
 - i. The Respondent has made enquiries with the local authority and privately but has been unable to find suitable alternative accommodation.
3. In light of the matters agreed by the parties, the only question for the Tribunal was whether it was reasonable to grant an eviction order. In that respect, the Applicant's primary submission was that he required the Property back for his daughter to move into.
4. At the start of the Hearing, it became clear that the Applicant had lodged documents with the Tribunal, comprising a doctor's letter and prescription medication form, by email on 12 January 2024, but that those documents had neither (i) been provided to the Legal Member of the Tribunal, or (ii) been provided to the Respondent. The Hearing was adjourned briefly for the documents to be circulated and considered.
5. When the Hearing resumed, the Respondent confirmed that he no longer disputed that the Applicant intended for his daughter to move into the Property.

Evidence

Mark Sexton

6. The Applicant gave evidence in this matter. He is 48 years old and lives with his wife and two adult daughters, aged 21 and 23. He is in full-time employment as an HGV driver, and generally works nightshift.
7. The Applicant confirmed that this action principally arises out of his eldest daughter's circumstances. He said that his daughter suffers from fibromyalgia. The doctor's letter dated 13 September 2023 and provided on 12 January 2024 states as much. He explained that his daughter had previously lived in a tenth floor flat. The lift in the block would fail from time to time. In or around June 2023 his daughter advised the Applicant that her living conditions were not suitable. Her condition was such that she could not manage stairs, and particularly during a flare up of her condition. As a result, it was agreed between the Applicant and his daughter that the Applicant would recover possession of the Property and that she would move into it. The Applicant's daughter returned to the family home in or around August 2023, to await recovery of the Property.
8. The Applicant advised that his home is unsuitable for his daughter. The house is over two stories. All of the bedrooms are on the first floor. The bathroom is

on the ground floor. If the Applicant's daughter is in her bedroom and needs to use the toilet, but has a flare up, she cannot go downstairs without assistance. She is effectively trapped upstairs. The Applicant's bathroom also has a shower over a bath, which his daughter finds difficult to step into due to her condition. The Applicant's wife often requires to help his daughter in and out of the bath. In terms of sleeping arrangements, the Applicant's daughter sleeps in a small box bedroom, which he describes as unsuitable for a young woman of her age.

9. By comparison, the Property is suitable for his daughter's needs. It is a ground floor flat. It has one bedroom. The bathroom has a shower tray rather than a bath. There is level entry to the property, with one step into the kitchen. Whilst the garden is down eight steps, the living accommodation is essentially the one level.
10. The Applicant confirmed that the Property is the only property in his portfolio other than his home. It is subject to mortgage lending. The Respondent is not in rent arrears. In terms of repairs, the Applicant said that the Respondent had previously complained of draughts in the Property. The Applicant then installed new windows. There had been a previous report of mould, but the Applicant said that he received professional advice that this was due to the Respondent running a tumble dryer and not ventilating the Property properly. The air vents on the windows were not open. The last repairs issue that the Applicant was aware of was a problem with a fan at the Property, which was remedied. The Applicant said that he was unaware of any repairing issues, and a further complaint of mould, until after the Application was raised.
11. As regards an allegation by the Respondent that the eviction notices had been served the day after a repairs complaint had been made, the Applicant disputed that. He was unaware of any such complaint having been made. However, he also said that if there was a correlation between the making of a repairs complaint and service of the notice then it was purely coincidental.
12. The Applicant's position was straightforward: he owned the Property, it was suitable for his daughter, and he wanted to move his daughter into it to assist her living conditions and give her back a bit of independence.

Craig Ross

13. The Respondent's position was that he was unaware of the Applicant's daughter's medical needs when he defended the Application. He has his own medical issues, including mental health and gastrointestinal issues, for which he is prescribed some of the same medication. In that respect, he sympathised with the Applicant's daughter and accepted the need to be close to her family for support. He also expressed understanding with the Applicant's position, being a father himself.
14. The Respondent confirmed that he shares overnight custody of his two year old daughter with his former partner. He conceded that whilst the Property

was fine for his needs whilst his daughter is young, it would not be long before he would need more space; in particular another bedroom.

15. The Property has not been adapted for the Respondent's use. He is in full time employment as a chef, and his place of work is a 12 minute drive door to door. He drives himself to work. The Property is five minutes away from his parents' home and his ex-partner's home. It is near to Monklands Hospital, which he attends monthly for reviews and every six months for screening. His daughter shares some of his medical conditions.
16. The Respondent confirmed that he could stay with his parents whilst looking for alternative accommodation, though that would not be particularly ideal for his daughter. He confirmed that he had been looking for alternative accommodation but could not afford rent in the private rented sector. He had approached the local authority as a potentially homeless person and been advised that, although he will be eligible for the highest points allocation due to this being a "no fault" eviction, he would not be rehomed unless and until an eviction order is granted.
17. The Respondent maintained that he had made reports of disrepair to the Applicant's letting agent and that the eviction notices had coincided with the making of those reports. His view was that the Property had a mould issue, and would likely not be suitable for the Applicant's daughter in any event.

Assessment

18. The Tribunal found both witnesses to be credible and reliable. In truth, it became clear that there was not really much in dispute between them. Insofar as the notices served by the Applicant on the Respondent were in close temporal proximity to the making of repairs complaints, the Tribunal was satisfied that this was coincidental. In all other respects, the Tribunal accepted their evidence in full.

Decision

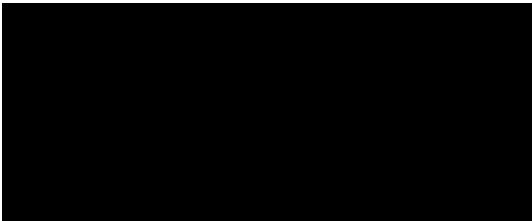
19. There is no dispute between the parties that the substance of section 33 of the Housing (Scotland) Act 1988 has been met. The required notices have been served, and the contractual tenancy is at an end. The only extant matter is the question of reasonableness.
20. The role of a judge when considering reasonableness is set out in *Cumming v Danson*, [1942] 2 All E.R. 653. This is an English decision, but it carries persuasive weight and, in the Tribunal's view, sets out the correct approach to assessing reasonableness. At page 655, Lord Greene MR said: "[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.”

21. In this case, the Tribunal has had regard to all of the circumstances as spoken to by the parties. However, in reaching its decision, the Tribunal has given particular weight to the Applicant’s desire to provide a safe and suitable home for his daughter in light of her medical issues, the obvious suitability of the Property for that purpose, the impending unsuitability of the Property for the Respondent’s own purposes as his daughter gets older, and the likelihood that the Respondent will be able to find suitable alternative accommodation with local authority assistance.
22. For those reasons, the Tribunal unanimously determined that it was reasonable to grant the eviction order, and it did so.

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.Upton

Legal Member/Chair

11/03/2024

Date