



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

Chamber Ref: FTS/HPC/EV/23/3142

Re: Property at 75 Parkholme Drive, Parkhouse, Glasgow, G53 7WQ (“the Property”)

Parties:

Dr Muhammad Sartaj, Mrs Aneela Sartaj, 2 Cherrytree Grove, Belfast Road, Antrim, BT41 1PP (“the Applicant”)

Ms Samantha McDermott, 75 Parkholme Drive, Parkhouse, Glasgow, G53 7WQ (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Gerard Darroch (Ordinary Member)

Decision The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for the order for possession should be granted.

Background

1. The application received on 7 September 2023 sought an eviction order under Rule 66 on the basis that the Short Assured Tenancy had been brought to an end by service of the relevant notices. Supporting documentation was submitted, including a copy of the tenancy agreements, AT5s, Notice to Quit, Section 33 Notice and section 11 Notice to the local authority. The Short Assured Tenancy began on 18 October 2012.
2. Following initial procedure, the application was accepted by the Tribunal on 3 November 2023 and notified to the Respondent by Sheriff Officer on 15 January 2024. No representations were received from the Respondent prior to the Case Management Discussion (“CMD”).

3. The CMD took place by telephone conference call on 28 January 2024 at 10am and was attended on behalf of the Applicant by Mrs Cetti Bains of Happy Lets Limited and by the Respondent, Ms Samantha McDermott.
4. The Respondent outlined her position in respect of the application and provided information regarding her family and personal circumstances. In particular, it was noted that she hoped to move back into a property that she jointly owns with her husband, which is currently let out to tenants. She and her husband have been separated for a long time and it was her husband who was currently dealing with a Tribunal application to evict these tenants. Mrs Bains explained the Applicant's position and the reasons for the Applicant wishing to recover the Property and sell it. She mentioned the length of time since Notice was served on the Respondent (April 2023), the extensions the Applicant has granted already on the basis of information previously provided by the Respondent, which differs to some of what the Respondent was saying at the CMD. The Tribunal explained that the application would be continued on to an Evidential Hearing as it was necessary for the Tribunal to hear further evidence before deciding if the 'reasonableness' test was satisfied, given the circumstances of both the Applicant and the Respondent. It was also explained that further documentation would require to be lodged by both parties and that the Tribunal would issue a Direction, setting out its requirements in this regard and in respect of any witnesses the parties intend to have at the Evidential Hearing. The Respondent indicated that she would make further enquiries with her husband regarding the other Tribunal proceedings and also with the local authority, to ascertain if she has any other options regarding alternative housing. She indicated that if there are any relevant developments or changes in her position in relation to this application, she would inform the Tribunal.
5. Following the CMD, the Tribunal issued a CMD Note and Direction requiring both parties to lodge further evidence, as above. An Evidential Hearing was fixed to take place on 5 June 2024 and parties notified of the details.
6. On 17 May 2024, the Applicant's representative lodged further documentation on behalf of the Applicant, in accordance with the Direction. This was circulated to the Respondent subsequently, once permission had been obtained from the Applicant, due to some of the documentation being sensitive in nature.
7. Nothing was lodged by the Respondent in response to the Direction and no contact was received from her prior to the Evidential Hearing.

Evidential Hearing

8. The Evidential Hearing took place by way of video-conference call on 5 June 2024, commencing at 10am. In attendance was the Applicant, Dr Muhammad Sartaj, who was attending on behalf of his wife, the joint Applicant. Mrs Cetti Bains of Happy Lets Limited represented the Applicant. The Respondent, Ms Samantha McDermott also attended and was accompanied by her mother, Ms Elaine Duffy who was attending in a supportive capacity.

9. The Legal Member made introductory comments and explained the background to the Evidential Hearing having been fixed and that the Tribunal was to hear evidence on the issue of reasonableness. It was established that Ms McDermott had received a copy of the documentation submitted on behalf of the Applicant recently. She explained that she did not have any documentation of her own to produce but would give verbal evidence and an update to the Tribunal today.

10. Mrs Ceetl Bains

Mrs Bains confirmed that this process had been ongoing for more than a year. The Applicant was still seeking an eviction order. She explained the reasons why. She referred to the fact that She made reference to the documentation submitted on behalf of the Applicant which includes information about the Applicant's circumstances, their mortgage position and medical information relating to Dr Sartaj. She explained that Dr Sartaj is suffering from stress and anxiety and has been living between the UK and Pakistan, where he works. The Applicant's mortgage in respect of the Property was previously on a fixed rate of 2.8% which expired in May 2024 and is now paying a rate of 9.74%. This raises the mortgage payments to £1,378 per month, which compares to the monthly rent of £805.

11. Dr Muhammad Sartaj

Dr Sartaj confirmed that he lives mostly in Pakistan, where he works and where his elderly parents reside. His family home is in Northern Ireland where he stays when he is home with his wife and two children, one aged 19 who is about to start university and a younger child who is just sitting her GCSEs. He explained that he and his family had always intended to move back to Glasgow where this Property is but in 2019, they decided to take on the house in Northern Ireland as they were settled there. They have been considering selling this Property since then but has now required to take formal steps to reduce the financial burden on himself and his family and to deal with the impacts on himself and his health. He referred to the medical information produced. He explained the position regarding the monthly shortfall between their mortgage and the rent payments received and added that, although the figure of £805 is the gross rent payment, they also have to pay for the management fees, repairs and other expenses involved in running a property. With the mortgage payments going up, they will have a much lower income from the Property and this is too much of a financial burden. They have a mortgage over their family home in Northern Ireland and, although his employers pay his rent in Pakistan, he has the usual running costs of that property to pay too. Dr Sartaj confirmed that they own another property in Northern Ireland which they currently rent out too, although this will have to be sold as well due to property maintenance costs. He explained that they previously tried to sell that property and when this was unsuccessful, they ended up renting it out until they can sell it. As to Ms McDermott's position, Dr Sartaj confirmed that she has been a very good tenant for a long time and that they have tried to help her as much as they could with giving her extensions to sort out her own situation. However, it is now at the point where the Applicant needs things sorted out at their end as every day brings more financial pressure and impacts on his health and his own family.

Dr Sartaj confirmed that he dealt directly with Ms McDermott when she sought an extension previously but that it has been Mrs Bains who has dealt with Ms McDermott in relation to the Tribunal proceedings.

12. Mrs Ceetl Bains

Mrs Bains confirmed that Ms McDermott had been in contact after Notice was served and that the Applicant had agreed to extend the period of notice and then again for another month or so, as it seemed at that stage that Ms McDermott would be able to recover her own property to move back into. However, she then advised that her tenants were not moving out and that she would have to evict them. Mrs Bains had given Ms McDermott some advice in relation to the situation as Ms McDermott had said that she had only given her own tenants verbal notice initially. Both Mrs Bains and the Applicant tried to work with Ms McDermott to assist her and understood that Tribunal proceedings were underway. However, at the CMD, Ms McDermott had then explained that her own property was actually jointly owned with her husband and that he was dealing with the Tribunal application. Mrs Bains confirmed that she has not heard anything further from Ms McDermott since the CMD, until this morning when Ms McDermott had contacted her about arrangements for this Hearing. Mrs Bains confirmed that the rent is still being paid.

13. Ms Samantha McDermott

Ms McDermott explained that she had wanted to move back into her other property but that this is no longer an option. Her relationship with her husband is bad and she doesn't know what the situation was with the Tribunal proceedings that he was dealing with. He was having problems before with the application being repeatedly rejected. He said that she is no longer on the mortgage and she doesn't think she is on the title either. She explained that she has been away from that property for twelve years since they separated and doesn't think there is anything she can do about this. Ms McDermott confirmed that she has been in contact with Barrhead and Glenoaks Housing Associations and also with the local authority homeless service. They have told her that she has to wait until an eviction order is granted here. Ms McDermott confirmed that she was consenting to an eviction order being granted now as she thinks this would be fairest on everyone. She accepts the Applicant's position and confirmed that Dr Sartaj has been good to her. She apologised for the delays in getting to this stage. Ms McDermott confirmed her personal and financial circumstances are still the same. She lives with her children, aged 17, 14 and 11 and her eldest son, who is in the army, still comes home every weekend. Her 17 year old daughter is at college and her youngest children are both at local schools. Her 14 year old son is awaiting diagnosis but has additional support needs. She mentioned that he hates change so hopes that they do not require to go into temporary accommodation before being offered something permanent. She hopes to be able to stay locally but Glasgow homeless service have not been able to say yet where she will be re-housed. Ms McDermott is still working and in receipt of Working Families Tax Credits. She would appreciate an extension of 3 months in relation to any eviction order as she has been told by the local authority that it will probably take 8 to 12 weeks for her to be re-housed.

14. Summing-up

Mrs Bains confirmed that the Applicant was seeking an eviction order due to their own circumstances and given that this appears to be the only way that Ms McDermott will be able to get help with her application for social housing. The Applicant would prefer to have a set date fixed for an eviction and not a formal extension of the date, although they would still try and accommodate Ms McDermott as much as possible.

Ms McDermott confirmed that she would also like a date set so that she can get things in motion with her application for social housing but would still like an extension of around 3 months on the eviction date so that the local authority can hopefully find them something permanent in that timescale.

15. There was brief discussion regarding the process which would follow now and the Legal Member confirmed that the Tribunal would now adjourn to make their decision, which would be intimated in writing shortly. Parties were thanked for their attendance and the Evidential Hearing concluded.

Findings in Fact

1. The Applicant is the joint owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Short Assured Tenancy which commenced on 18 October 2012.
3. The Applicant ended the contractual tenancy by serving on the Respondent a Notice to Quit and Section 33 Notice dated and posted 21 April 2023 and delivered to the Respondent on 22 April 2023, specifying the end of the notice period (at least 2 months) as 17 July 2023, an ish date in terms of the lease. Both notices were in the correct form, provided sufficient notice and were served validly on the Respondent by Recorded Delivery/'signed for' post.
4. The Respondent has remained in possession of the Property following expiry of the notice period.
5. This application was lodged with the Tribunal on 7 September 2023, following expiry of the notice period.
6. The Respondent did not lodge any representations but participated in both the CMD and the Evidential Hearing.
7. The Respondent no longer contested the application.

Reasons for Decision

1. The Tribunal was satisfied that the Respondent understood the position and was no longer wishing to contest the eviction application by the time of the Evidential Hearing. She had explained the reasons for her change in position since the CMD and updated the Tribunal in respect of her circumstances.
2. The Tribunal was satisfied that pre-action requirements including the service of the Notice to Quit and Section 33 Notice in terms of the 1988 Act had been properly and timeously carried out by the Applicant prior to the lodging of the Tribunal application.
3. Section 33(1) of the Act states that an order for possession shall be granted by the Tribunal if satisfied that the short assured tenancy has reached its finish; that tacit relocation is not operating; that the landlord has given to the tenant notice stating that he requires possession of the house; and that it is reasonable to make an order for possession. The Tribunal was satisfied that all requirements of Section 33(1) had been met.
4. As to reasonableness, the Tribunal considered the oral evidence given by both the first Applicant, his letting agent and the Respondent at the Evidential Hearing, together with the supporting documentation submitted with the application and more recently in response to the Direction on behalf of the Applicant. The Tribunal was satisfied from the Applicant's evidence that their reason for wishing to recover possession of the Property was that they required to sell the Property and that there were both financial and personal reasons for this, including the first Applicant's health and the fact that the first Applicant was living between the UK and Pakistan, due to his employment and family circumstances. The Tribunal noted, in particular, the rising mortgage costs of the Applicant and the substantial increase in their mortgage payments as of May 2024 and the significant shortfall between the mortgage and rent payments being received. The Tribunal also noted that medical evidence had been submitted, confirming the first Applicant's health condition as well as evidence of his employment in Pakistan.
5. The Tribunal also took into account the personal and family circumstances of the Respondent and noted, in particular, that she had now been in contact with the local authority to seek re-housing and has made them aware of her current circumstances. The Respondent took no issue with the information put forward by and on behalf of, the Applicant. Both parties appeared to have sympathy for the other's circumstances and the Respondent apologised for the delays in reaching this point. She explained why she was now consenting to an eviction order being granted and had, in fact, been told by the local authority that her housing application would only progress once an order has been granted. The Respondent had also explained her understanding of the likely timescale for the local authority being able to offer her permanent accommodation. She explained why she would prefer to avoid having to be placed in temporary accommodation first, due to her son's additional support needs and not liking too much change and requested an extension of the usual timescale for eviction

in these circumstances. The Applicant was not opposed to an extension, provided it was not particularly lengthy, bearing in mind the Applicant's own circumstances.

6. In all of the circumstances, the Tribunal considered that it was reasonable to grant the eviction order sought, subject to an extension of the implementation date of the eviction order to 12 weeks from today's date, namely 28 August 2024.

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.

Nicola Weir

Legal Member/Chair _____

5 June 2024
Date