



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, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/EV/24/0062

Re: Property at 2 Finch Drive, Knightswood, Glasgow, G13 4QJ (“the Property”)

Parties:

Mr Alan MacGregor, Glencart Farm, Dalry, KA24 4HH (“the Applicant”)

Ms Fiona Florence, 2 Finch Drive, Knightswood, Glasgow, G13 4QJ (“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 5 January 2024 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 agreement, AT5, Notice to Quit, Section 33 Notice and section 11 Notice to the local authority. The Short Assured Tenancy began on 27 August 2014.
2. Following initial procedure, the application was accepted by the Tribunal on 5 April 2024 and notified to the Respondent by Sheriff Officer on 4 July 2024. Representations were to be lodged by 24 July 2024.

3. Written representations were lodged on behalf of the Respondent on 24 July 2024 and a written response on behalf of the Applicant on 30 July 2024.

Case Management Discussion

4. The Case Management Discussion (“CMD”) took place by telephone conference call on 12 August 2024 at 10am and was attended on behalf of the Applicant by Mrs Audrey Dresh of Blair & Bryden Solicitors and on behalf of the Respondent by Ms Fiona Anderson of Legal Services Agency Ltd.
5. Following introductions and introductory comments by the Legal Member, Ms Anderson advised in relation to the Respondent’s position which was that she was not opposing the eviction but was seeking an extension of time of around 3 months to allow the local authority processes to take place and a suitable property to be identified for the Respondent and her three children. As per the written representations lodged, the Respondent’s children are 18, 12 and 7 and a four-bedroom property is required, which can take a bit longer as there are fewer of them. All three children have additional needs and the two younger children currently attend schools in the Knightswood area where it is hoped they can remain in order to minimise disruption. The 12 year-old child is just starting secondary school today. The Respondent has a limited income and is in receipt of benefits and needs to obtain social housing as she cannot afford the private sector. She has been in contact with the local authority but they have not yet accepted a homeless application from her. Ms Anderson’s experience is that the homeless application will only be accepted around the time of the first CMD. As to the extension sought by the Respondent, Ms Anderson confirmed that the Respondent understands the Applicant’s position but hopes that an extension of the eviction date will allow time for a suitable property to be identified and available to the Respondent. Ms Anderson confirmed that she had had telephone discussions with the Applicant’s representative on Friday. The Request for an extension is no longer opposed and this is now an agreed position.
6. Mrs Dresh confirmed that this was the case.
7. The Tribunal Members were in agreement that the application was in order and, given the agreed position of the parties, that the eviction order sought would be granted, subject to a 12 week extension from today in respect of the eviction date. Parties were thanked for their attendance.

Findings in Fact

1. The Applicant is the 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 27 August 2014.

3. The tenancy was initially in the joint names of the Respondent and her husband but they are now divorced and all parties had agreed to him being released from the tenancy in 2019.
4. The Applicant ended the contractual tenancy by serving on the Respondent a Notice to Quit and Section 33 Notice dated and posted 18 October 2023 and delivered to the Respondent on 19 October 2023, specifying the end of the notice period as 27 December 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.
5. The Respondent has remained in possession of the Property following expiry of the notice period.
6. This application was lodged with the Tribunal on 5 January 2024, following expiry of the notice period.
7. The Respondent did not contest the application, but sought an extension on the eviction date to allow her application for social housing to progress.
8. The Applicant no longer opposed such an extension.

Reasons for Decision

1. 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.
2. 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.
3. As to reasonableness, the Tribunal considered the background to the application, the written representations lodged previously on behalf of both parties and the oral submissions of both parties' representatives at the CMD. The Tribunal was satisfied that the Applicant's reason for wishing to recover possession of the Property was that he required to sell the Property, primarily for financial reasons, as his mortgage payments had risen substantially and there is a shortfall every month between the rent received and the mortgage payments. The Tribunal also took into account the personal and family circumstances of the Respondent and noted, in particular, that she is 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 on behalf of the Applicant and it appeared that both parties had some

sympathy for the other's position. The Respondent had had the benefit of legal advice and did not contest the eviction. Although prior to the CMD, the Applicant had been opposed to an extended date for eviction, given the time the eviction process had already been ongoing, parties had had further recent discussions and the Applicant was no longer opposing an extension.

4. 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 4 November 2024, to give additional time for suitable social housing to be identified for the Respondent and her family.

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

12 August 2024
Date