



**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/23/4472

Re: Property at 2B York Way, Renfrew, PA4 0NG ("the Property")

Parties:

Mr Bhagwan Singh, 57 Craw Road, Paisley, PA2 6AE ("the Applicant")

Ms Lynsay Marshall, 2B York Way, Renfrew, PA4 0NG ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

At the Case Management Discussion ("CMD") which took place by telephone conference on 16 September 2024, the Applicant was not in attendance but was represented by Ms Joanne Simpson of 1st Lets (Glasgow) Limited. The Respondent was present

The CMD was also in respect of the related case bearing reference FTS/HPC/CV/23/4474.

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that:-

Background

The Tribunal noted the following background:-

- i. The Applicant leased the Property to the Respondent in terms of a Short Assured Tenancy ("the SAT") that commenced on 3 September 2014.
- ii. The initial term of the SAT was for the period to 3 March 2015 and in terms thereof the SAT continued thereafter by tacit relocation.
- iii. On 15 February 2023, the Applicant served on the Respondent by recorded delivery post a Notice to Quit and a Notice under Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") requiring the Respondent remove from the Property by 3 September 2023.
- iv. The Applicant has served on Renfrewshire Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

None of the foregoing matters were in dispute.

The CMD

At the CMD the parties made the following oral representations:-

For the Applicant

- i. Ms Simpson confirmed that the Applicant is still seeking an eviction order.
 - ii. She indicated that the Applicant requires to sell the Property due to financial hardship. The Applicant is in his late 70s/early 80s. He is retired. He wants to retire from being a landlord. His own home requires upgraded. He has stayed there a long time. He requires to sell his assets to raise funds for improvements to his property and to provide an income. He receives the minimum State Pension and has no other source of income.
 - iii. In addition to his home and the Property, the Applicant has one other rental property that Ms Simpson manages on his behalf and that will also be sold. The tenants have not yet been given notice, that will be dealt with after the current proceedings are concluded.
 - iv. The rent outstanding and due by the Respondent is £10,052 as at the CMD. The last payment was made by the Respondent on 11 April 2023.
 - v. There is no mortgage over the Property.
 - vi. In response to a question from the Tribunal as to why rent has not been paid, Ms Simpson stated that initially it was assumed that rent was not paid due to a Notice to Quit etc having been served. The Respondent then reported outstanding repairs and that remains her stance.
 - vii. Ms Simpson asked for proof that the Respondent has kept the unpaid rent aside securely. That has not been received.
 - viii. The Applicant is thought to have last inspected the Property in around 2022. Ms Simpson had details that showed access was requested at that time but she was not sure if access was given.
 - ix. The Applicant deals with repairs and uses his own contractors.
 - x. Reports of repairs required had been received from the Respondent and from the local authority.
 - xi. A letter was received from the local authority dated 4 April 2024. This letter stated that the Property does not meet the Repairing Standard. The letter was given to the Applicant. He is prepared to carry out the works required but does not have the funds to do so. The following items of work are listed in the letter –
 - Repair required to damaged toilet seat,
 - Bathroom hot tap loose,
 - Bedroom two – electrical sockets not working,
 - Three burners on the gas hob in the kitchen not working,
 - Washing machine door broken and lying on the floor,
 - Dampness below kitchen window,
 - Bedroom two – dampness to right of window.
 - Bedroom three – dampness to left of window and below window.
- The dampness is to be investigated and repaired.
- xii. The only previous reports by the Respondent of dampness was in 2022 by telephone call when she referred to dampness in the kitchen and the bedroom of her child.

- xiii. Then on 16 November 2023 the Respondent said in an email that she was still waiting on the damp issue being resolved, that a water leak was affecting her child who could not sleep, that the washing machine door was off, that the windows were not sealed properly and that once these items were fixed she would pay rent. Ms Simpson reported these issues directly to the Applicant. No works have been undertaken by him.
- xiv. The rent has not increased during the SAT. The Applicant was aware that the Respondent is a lone parent with children. The Applicant had an income at that time and therefore did not give any instructions to Ms Simpson to increase the rent.
- xv. When paid, the Respondent settled the rent due by standing order.
- xvi. With regard to state benefits, the Respondent previously indicated that she was in receipt of Universal Credit.

The Respondent

- i. The Respondent stated that she does not want to stay in the Property.
- ii. The Property has been deemed uninhabitable by the Environmental Health Officer of the local authority. There is dampness in every room. The Respondent would like to leave the Property. However, it is difficult to find alternative accommodation.
- iii. The Respondent has two children aged 9 and 14 years. Both have autism. The prospect of moving home is affecting them as it interferes with their routine. The Respondent's 9 year old child has only ever known living in the Property. She has been trying to tell them gradually that they will need to move. Any change is a massive issue.
- iv. The Respondent had been told that no properties are available in Renfrew in either the public or private sector. Rents in Renfrew are very expensive. She has been told to look outwith Renfrew. Her children attend school within Renfrew.
- v. Initially the Council removed her from the housing list due to rent being unpaid in respect of the SAT. However, after explaining the circumstances and the condition of the Property, her name has been reinstated on the housing list. She has been told she has the highest priority. She has also applied to be housed in Paisley too.
- vi. The whole situation is affecting her. She is of the view that the condition of the Property is giving her sore bones, she is feeling down and is generally sluggish.
- vii. The dampness in the Property began almost immediately she moved in. Neighbours told her that the Applicant had painted over the dampness. The dampness started to appear in the boxroom around six months after moving in. At that point her son was sleeping in her bedroom as still a baby.
- viii. There was black mould in the drawers and all over the bed. She pulled the bed out and found lice behind. Her son has continued to sleep in her room.
- ix. The Respondent said she has been putting her rent into an account with Royal Bank of Scotland every month. She can produce evidence that there is around £10,000 saved there. She said she had not been asked to produce any evidence before now.
- x. The Housing Officer has seen the condition of the Property. In response to a question by the Tribunal as to why she had not made an application to the Tribunal for a Repairing Standards Enforcement Order, she said she was advised by the Housing Officer to simply give the information to the Tribunal in these proceedings rather than taking out a separate case.

- xi. The Respondent said she is not comfortable in her own home and does not feel safe. The hob is not safe. Around six months ago she was told not to use it. Some plugs are also marked as unsafe and not to be used. She considers it to be disgusting how she is living. She has painted the house so as not to see the dampness but it is still there.
- xii. The Respondent said she is not working. She is in receipt of Universal Credit and Child Disability Payments for both children. She also receives Carer's Allowance.
- xiii. The situation has had an impact on her mental health. She received the eviction Notices shortly after she lost her mum.
- xiv. The Respondent said that the only way out of the Property is for her to be deemed to be homeless. She thinks she should be compensated for the conditions in which she is living.
- xv. The Property is on the ground floor. It is a very big job to repair the rising damp which is causing the issues.
- xvi. Someone from the Applicant's letting agent previously attended the Property and said the cause of the dampness was condensation and she was advised to open the windows.
- xvii. There has also been a dead mouse in the kitchen which she had to pay a contractor to remove.

Further Submissions for Applicant

In response to the Respondent's submissions Ms Simpson stated that service of the Notices to evict was coincidental relative to the timing of the Respondent's mother's death. With regard to the rent, Ms Simpson said the Respondent should have applied for the abatement of rent but a substantial amount remains due. She has been and is able to live in the Property.

The tribunal adjourned to consider the parties written and oral representations.

Findings in Fact

The Tribunal made the following findings in fact:-

- i. The Applicant leased the Property to the Respondent in terms of the SAT that commenced on 3 September 2014.
- ii. The initial term of the SAT was for the period to 3 March 2015 and in terms thereof the SAT continued thereafter by tacit relocation.
- iii. On 15 February 2023, the Applicant served on the Respondent by recorded delivery post a Notice to Quit and a Notice under Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") requiring the Respondent remove from the Property by 3 September 2023.
- iv. The Applicant has served on Renfrewshire Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- v. The Applicant requires to sell the Property due to financial hardship.
- vi. The Applicant is in his late 70s/early 80s. He is retired.
- vii. The Applicant wants to retire from being a landlord. His own home requires upgraded. He has stayed there a long time. He requires to sell his assets to raise funds for improvements to his property and to provide an income.
- viii. The Applicant receives the minimum State Pension and has no other source of income.
- ix. In addition to his home and the Property, the Applicant has one other rental property which will also be sold.
- x. There is no mortgage over the Property.

- xi. The Property is a ground floor property.
- xii. By letter dated 4 April 2024 Renfrewshire Council issued to the Applicant a letter stating that the Property does not meet the Repairing Standard. No works have been carried out to the Property by the Applicant since the letter was received.
- xiii. The Respondent does not want to stay in the Property. However, she cannot find alternative accommodation.
- xiv. The Respondent has two children aged 9 and 14 years. Both have autism. The prospect of moving home is affecting them as it interferes with their routine. The Respondent's 9 year old child has only ever known living in the Property.

Reasons for Decision

The Tribunal considered whether to grant an eviction order under Section 33 of the 1988 Act.

Section 33(1) states:-

"Recovery of possession on termination of a short assured tenancy.

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, 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.

The Tribunal is satisfied that the SAT had reached its ish and that tacit relocation is not now operating.

The Tribunal is satisfied that the Applicant had given proper notice to the Respondent that he requires possession of the Property having regard to the terms of Section 33(2).

The Tribunal considered carefully whether it would be reasonable to grant an eviction order.

The Tribunal took into account the following:-

- i. The Applicant requires to sell the Property due to financial hardship.
- ii. The Applicant is elderly and retired.
- iii. The Applicant no longer wants to be a landlord. His own home requires upgraded. He requires to sell his assets to raise funds for improvements to his property and to provide an income.
- iv. The Applicant receives the minimum State Pension and has no other source of income.
- v. The Applicant is not maintaining the Property to the Repairing Standard. He ought not to be a landlord if he cannot properly maintain properties leased out.
- vi. The Respondent does not want to live in the Property with her children due to its condition but her efforts to find alternative accommodation have been in vain.

- vii. The Tribunal has no wish to compel the Respondent and her children to continue living in a property that does not meet the Repairing Standard when the Respondent does not wish to do so which would be the effect of not granting an eviction order.
- viii. The Tribunal took into account that the best interests of both parties would be served by the granting of an eviction order.

The Tribunal therefore determined that it would be reasonable to issue an eviction order.

Decision

The Tribunal granted an eviction order in favour of the Applicant.

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

G Buchanan

_____ **16 September 2024**
Date