



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

Chamber Ref: FTS/HPC/EV/24/1010

Re:

Property at 1A Stevenson Street, Paisley, PA2 6BL (“the Property”)

Parties: Looking for Properties LTD, 11 Cheviot Drive, Newton Mearns, Glasgow, G77 5AT (“the Applicant”) per their agents, Prg Properties, 12A, Bridgewater Erskine, PA8 7AA (“the Applicant’s Agents”)

Mr James Boyce, 1A Stevenson Street, Paisley, PA2 6BL (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory process for eviction and recovery of possession having been established, it is reasonable to grant the Order sought.

Background

1. By application received on 29 February 2024 and 4 March 2024 (“the Application”), the Applicant applied to the Tribunal for an Order for eviction and possession of the Property based on Section 33 of the Act.
2. The Application comprised the following: i) Copy tenancy agreement between the Parties; ii) Copy AT5 and copy AT6; iii) copy Notice to Quit and copy Section 33 Notice with proof service and iv) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Renfrewshire Council being the relevant local authority.

CMD

3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") took place on 22 July 2024 at 14.00 by telephone. The Applicant was not present and was represented by Mrs. M. Mitchell of the Applicant's Agents. The Respondent was not present and was not represented. The CMD was adjourned for the Applicant's Agents to provide background information in respect of Section 33 (e) of the Act which states: *"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 finish; (b)that tacit relocation is not operating;(c). (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 issued a Direction on the range of information required to make a decision on reasonableness.
4. The Applicant's Agents complied with the Direction and submitted an explanation of the Applicant's property holding and their reasons for terminating the tenancy. Also submitted was information in respect of the Applicant's Agents' dealings with the Respondent in respect of repairs to the Property.

Adjourned CMD

6. The adjourned CMD took place on 6 December 2024 at 10.00 by telephone. Mrs. Hamilton of the Applicant was present and was represented by Mrs. M. Mitchell of the Applicant's Agents. The Respondent was present and was not represented.
7. The Tribunal explained to the Parties that, from the previous CMD, although the Tribunal was satisfied that the statutory procedure for the Application had been carried out correctly, the Tribunal required to consider the reasonableness of the Application.
8. The Tribunal noted the commercial reasons set out in the Applicant's Agents' submissions that the Applicant has a small portfolio of nine properties, that the Property is in disrepair and is no longer a viable investment, the Applicant wishes to dispose of the Property having recently disposed of another property in the same street. The Tribunal noted that there had been an issue with access for inspections and repairs. They asked Mrs. Mitchell if there was anything further to add. Mrs. Mitchell stressed that the tenancy had been terminated correctly and the Applicant wished to sell for business reasons.
9. The Tribunal asked Mr. Boyce if he opposed the Application and he advised that his issue was the disrepair to the Property. When asked if he opposed on the basis of reasonableness, he stated that he did not and again stated that there is dampness in the Property which has remained untreated for six years.

10. Mr. Boyce confirmed that he did not allow workmen access to the Property as either they did not have the “correct papers” or were “not qualified”. He stated that he did not allow access to the Applicant’s Agents and Mrs Mitchell, in particular, as he considered her to be “bullying”.
11. With regard to his personal circumstances, Mr. Boyce stated that he is 55 years old, has asthma and is recovering from a stroke. He lives alone and is visited by his adult son a few days each week. Mr. Boyce stated that this son also has asthma and that the dampness in the Property worsens the conditions for both of them. With regard to alternative housing, Mr. Boyce advised that he has contacted his local authority in respect of the condition of the Property but not in relation to re-housing. He stated that he remains in the Property as repairs are still to be carried out.
12. For the avoidance of doubt, there is no dispute in respect of the disrepair to the Property and the Respondent’s refusal to allow access for repairs to be carried out.
13. The Tribunal adjourned to consider the information before it and asked the Parties to leave the call and return at 10.30. When the CMD reconvened the Respondent did not return to the call. The Tribunal proceeded in his absence.

Issue for the Tribunal

14. The issue for the Tribunal is to determine if the statutory ground is established and if it is reasonable to grant the Order. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal “*may do anything at a case management discussionincluding making a decision*”. The Tribunal took the view that it had sufficient information to make a decision. Therefore, the Tribunal proceeded to determine the Application.

Findings in Fact

15. From the Application, the CMDs and the written submissions, the Tribunal made the following findings in fact: -
 - i) There is a short assured tenancy of the Property between the Parties;
 - ii) A valid Section 33 Notice and a valid Notice to Quit were served;
 - iii) The Respondent has not vacated the Property and refuses to do so;
 - iv) The Respondent does not oppose the Application but raised concerns regarding the condition of the Property;
 - v) The Applicant is a commercial landlord with a portfolio of nine properties;
 - vi) The Property is in disrepair and its value is depreciating;
 - vii) The Respondent refuses access for repair to the Property and so the condition of the Property will continue to deteriorate;

- viii) The Applicant intends to sell the Property as it is no longer a viable property asset;
- ix) The Respondent is single man who has health issues, including asthma;
- x) The Respondent's adult son resides at the Property from time to time;
- xi) The Respondent's adult son also has asthma;
- xii) The condition of the Property exacerbates the health conditions of the Respondent and his son.

Decision and Reasons for Decision

16. The Tribunal had regard to all the information before it and to its Findings in Fact.
17. The Tribunal found that the statutory procedure to end the tenancy had been followed. The Tribunal also had regard to the fact that the Application is not formally opposed.
18. The Tribunal then considered if it could be satisfied that it is reasonable to issue an eviction order. In doing so, the Tribunal must establish, consider and properly weigh the "whole of the circumstances in which the application is made" (*Barclay v Hannah* 1947 S.C. 245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.
19. The Tribunal then looked to balance the rights and interests of both parties.
20. The Tribunal had regard to the fact that the Applicant intends to sell the Property as it is no longer a viable commercial asset. The Applicant is entitled and obliged to manage its portfolio to achieve best value for the company. The Respondent's refusal to allow repairs has a detrimental effect on the value of the Property as an asset of the Applicant. Tribunal noted that when the tenancy commenced, the Applicant had had an absolute right to terminate it on the proper statutory notice.
21. The Tribunal accepted the health difficulties which the Respondent and his son face. The Tribunal took the view that remaining in the Property will not improve these health conditions. The Tribunal found the Respondent's reasons for remaining in the Property whilst refusing to allow repairs to be carried out perverse in this regard. With regard to alternative accommodation, the Tribunal had regard to the fact that, if evicted and made homeless, the Respondent would have protection in terms of Part II of the Housing (Scotland) Act 1987 and so would be able to access advice and assistance on homelessness.

22. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order.

23. This Decision is 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.

Karen Moore

6 December 2024

Legal Member/Chair

Date