



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/EV/23/3008

Re: Property at 80 (2F1) Spottiswoode Street, Edinburgh, EH9 1DJ (“the Property”)

Parties:

Dr Augusto Azuara-Blanco, Dr Noemi Lois Puente, 40 Malone Park, Belfast, Northern Ireland, BT6 6NL; 40 Malone Park, Belfast, Northern Ireland, BT6 6NL (“the Applicants”)

Mr Alasdair MacLennan, Ms Evelyn Hurtado, 80 (2F1) Spottiswoode Street, Edinburgh, EH9 1DJ; 18 (3F3) Viewforth Gardens, Edinburgh, EH10 4ET (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member) and Melanie Booth (Ordinary Member)

BACKGROUND

1. By Lease dated 14 September 2009 the Applicants let the property to the Respondents.
2. Prior to the lease being signed the Applicants served a notice in terms of s32 of the Housing (Scotland) Act 1988 (“the 1988 Act”) upon the Respondents. The lease is, accordingly, a short assured tenancy.
3. On 16 May 2023 the Applicants served a Notice to Quit and a notice in terms of s33 of the 1988 Act upon the Respondents.
4. A notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 intimated to the Local Authority.

5. The Applicants thereafter raised proceedings seeking an order that the respondents be evicted from the Property.
6. While the tenancy is a short assured tenancy and, as such, the Applicants did not need to provide reasons for their intention to terminate the tenancy, on the basis the Tribunal requires to consider the reasonableness of any order, the Applicants advised the Property was in need of significant works which would take some time to complete and would require vacant possession.
7. A Case Management Discussion was assigned for 1st December 2023. Following the Case Management Discussion a hearing was assigned to determine disputed facts between the Parties and whether it was reasonable to grant an order for eviction.
8. After sundry procedure an evidential hearing was assigned for 16th August 2024.
9. Prior to the hearing, the Respondent lodged further submissions with the Tribunal. The Applicants lodged a list of witnesses and documents to be referred to.

THE HEARING

10. Prior to the Hearing on 16 August 2024 the Tribunal had convened earlier Hearings. Written submissions had been lodged by both parties and limited oral submissions had been heard. A Hearing which was convened on 5 July 2024 was adjourned to enable the Respondent's daughter's exam results to be known as her exam results would determine whether she would be attending University and which University. That was likely to have a significant bearing upon the Respondent's position in relation to the Application.
11. The Applicants gave evidence.

THE EVIDENCE

Dr Noeme Lois Puente

12. She advised that the Applicants initially rented the Property themselves but the opportunity to purchase it arose and they did so. Originally the Applicants lived within the Property.
13. The decision to let the Property thereafter arose due to their working commitments. The First Named Respondent was a consultant in Edinburgh. The Second Named Respondent was a consultant in Liverpool. They had the opportunity, however, to move to work in Aberdeen together. They did so and, as a result, decided to rent the Property. It was always their intention to return to live within the Property.

14. Thereafter, however, both Applicants were offered Professorships in Belfast so both relocated there. As a result, the rental of the Property continued. It was their intention, thereafter, to return to live in the Property when they retired. As at the date of the Hearing, their retiral date has not been set by them but it is still their intention to return to the Property.
15. When the tenancy was commenced in 2009 the monthly rent was £700.00. It is now only £850.00. It has increased by only £150.00 per month in 15 years. The last increase was in October 2019.
16. Because of their work commitments and their geographical location, the Applicants were unable to carry out inspections at the Property themselves. They engaged agents to do that locally. Prior to 2022 they were not made aware of any significant problems with the Property. At that time, however, the individuals who had been carrying out the inspections had left the business. The Second Respondent attended at the property herself during 2023 and was in shock at what she seen. The entrance door had a cat flap installed in it. The door was a beautiful door which now had a plastic cat flap. The tenancy agreement had a condition that there be no pets. The original furniture was no longer there.
17. In terms of work requiring to be undertaken, the Applicants always attended to any work which was required.
18. In 2022 the Property was being managed by MSF Property Letting Agents. The Applicants referred to an email from MSF Property dated 26 April 2022. Reference was made, in particular, to part of the email referring to the need for an electrical re-wire. It was stated that this would require the lifting of sections of floors in all rooms, the likely cutting of channels in walls to bring cables up for sockets, the need for the removal of wallpaper and, thereafter, the need for plastering work and decorating work after an electrical re-wire has been completed. It was stated by the Letting Agents that this would not be practical with a tenant in place. The email went on to suggest that the Applicants were at "a bit of a crossroads with the property at this stage" it suggested that, if significant re-wiring work was to be done, it might be appropriate to consider more significant renovations to include fitting a new kitchen, bathroom and flooring. The total cost of all such work would be significant. The Applicants confirmed that it was their intention to go ahead with all such work.
19. A subsequent email from MSF Property, dated 11 August 2022, highlighted the fact that costs quoted for work was on the basis that the tenants would not be resident when the work was being undertaken. The electrical work was likely to take two or three weeks, provided the tenants were not present.
20. The Applicants confirm that, as a result of the significant electrical work requiring to be done, and the need for general renovation, it was their intention to upgrade the whole apartment.

21. The Applicants made the Respondent aware of the work they intended to carry out and the fact they would wish to end the tenancy. Initially, they asked the Respondent to vacate the Property in 2022 or early 2023. They were willing to afford him a significant period of time to make arrangements. It was pointed out that the Applicants had been good to the tenant. They had increased the rent very little and were willing to accommodate him in that regard. He initially asked if he could vacate in summer 2023. The Applicants agreed to that. They thereafter agreed to October 2023. The Applicants pointed out that they were also willing to waive or reduce rental payments during the COVID pandemic in 2020.
22. At the end of the school year the Respondent asked for more time to make arrangements. That was agreed but the Respondent remains within the Property even now.
23. The work proposed will involve a full refurbishment. The Second Respondent arranged to attend at IKEA to plan the renovation of the kitchen. While doing that, the Second Respondent attended to inspect the Property. That was in summer 2023. It was at that stage she seen the cat flap in the door. The flooring in the property was in a poor condition. The kitchen was in a poor state of repair. The skirtings, floors, stairs, the whole apartment was needing attention. Her "heart sank".
24. When asked specifically about the work intended, Dr Noemi Lois Puente advised that the whole flat has a wooden floor. Skirtings and doors are wooden and are "beautiful". The wardrobes have doors incorporated into the walls. It is their intention to repair and decorate all the wooden areas within the Property. She believed that would take approximately one month.
25. In the bathroom, the flooring will be redone, the sink, WC, bath and all fittings will be replaced.
26. It is the intention to refit the entire kitchen.
27. It is their intention to have a full electrical re-wire. Quotations for the renovation/upgrading work were provided to the Tribunal and referred to during evidence.
28. Dr Noeme Lois Puente was referred to documents submitted by the Respondent one of which suggested that the re-wiring work would take a period of one week. Dr Noeme Lois Puente has seen the document but commented this does not cover all of the work which requires to be done. She explained, however, that she, quite simply, wishes the work to be done as quickly as possible.
29. The Second Applicant was asked if she had obtained any up-to-date quotes for work at the Property. She has not done so. She explained that, unless and until the Respondent vacates the Property, she will be unable to have the work carried out. Similarly, she has not placed any order with IKEA for the upgraded kitchen. Her file with them remains open but as the range of styles

change from time to time, she may require to review her choices when she is in a position to place the order.

30. Dr Noeme Lois Puente was asked if it is her intention to carry out any work while the tenant remains within the Property. She advised that some electrical work will be carried out to ensure the Property passes an electrical inspection but the bulk of the work intended cannot be done with a tenant in position.
31. Once the work is carried out, the Applicants may relet the Property but indicated they would need to think about that. The market rent for similar properties in the locality is significantly higher than the rent currently being charged. Market rent for similar properties is currently approximately £1,400.00 per month. If an eviction order was not granted the Applicants may seek to increase the rent but it is not something they have thought about at this stage.
32. In cross examination by the Respondent, Dr Noeme Lois Puente stated that when she and her husband were renting the Property they looked after it well and thereafter purchased it. When asked if the Applicants had continued to look after it well she replied "I am not there". The Applicants, however, feel that they have been fulfilling her duties as landlord in relation to repairs which were drawn to their attention.
33. In relation to a suggestion that the Applicants have allowed the property to become degraded, Dr Noeme Lois Puente advised that any issues which had been raised had been attended to by the Applicants. If problems with the Property had not been raised, then the Applicants are unaware of them and cannot address them.
34. When asked how many times the Applicants have visited the property in the last 15 years, it was stated that Dr Augusto Azuara-Blanco has not visited the property at all. Dr Noemi Lois Puente has visited it once. She, however, went on to explain that the Property has been let and they have letting agents managing it. When the Property was let initially, however, it was in a good condition.
35. It was denied that the current rent charged is a reflection of the lack of investment in the Property over the past 15 years.
36. When challenged on her comment to the effect that, if an eviction was not granted, the Applicants would probably look to increase the rent, was that not a contradiction to the Applicants suggestion that they have little interest in making money from the Property, Dr Noeme Lois Puente denied that. It was pointed out that, during COVID, the Applicants had a discussion with the letting agents about waiving rent during the pandemic. The Respondent pointed out this offer was never communicated to him. The Applicant, however, advised that she sent an email, dated 11 March 2020, to the letting agents saying that they did not know if the person renting the Property had a secure income but they would be prepared to reduce the rent while maintaining the fees of the letting agents.

37. The Respondent enquired as to whether the Applicants were satisfied with inspections carried out by the letting agents and suggested the Property was in a poor condition when he initially rented it. The response was that if it was in a poor condition he had a choice not to rent it and any issues raised during inspections were dealt with by the Applicants.
38. The Dr Noeme Lois Puente clarified that the Property was first let out in 2001 and the Respondent commenced his tenancy in 2009.
39. When questioned by the Tribunal, the Second Applicant stated she was unaware of the work which had been carried out over the past 23 years. She would need to check. She is aware, however, they repaired or changed the boiler, the refrigerator and the washing machine. In relation to the fabric of the building, she advised there is a factor for the property and the Applicants pay the appropriate portion of the cost of work required by the factor. They attend to everything they need to.

Dr Augusto Azuara-Blanco

40. Dr Azuara-Blanco gave evidence confirming the Property was let out in 2001 and between 2001 and 2022 there was never any suggestion that he was aware of that the Property was not in a habitable state. Any issues that were drawn to their attention were addressed.
41. There has been electrical work done at the Property before but not a full re-wire.
42. The Applicants are not professional landlords. They do not let out any other property. They have never let out any other property. The letting of this property has been a learning experience for the Applicants, and they will be more alert in future.

The Respondent

43. The Respondent gave evidence on his own behalf. He advised his main issue is protecting his family. He lives with his daughter. She may go to University or relocate in the future. If she moves to Glasgow his home will remain available for his daughter. His ex-wife lives nearby. He has friends nearby. His work is nearby. He wishes to remain in the Property for the benefit of himself and his daughter.
44. This eviction process has been stressful and difficult for him. He has never wanted to leave the Property. He is willing to remain in the Property while work is done or to relocate temporarily while work is done. He believes that this would be possible. He has offered to relocate at his own expense, and he has offered to pay an increased rent. He confirmed that, even if rent was increased to what appears to be the market value for similar properties, he would be able to make such payments.

45. He has been a “good steward” of the property. He has paid his rent regularly.
46. In relation to a suggestion of a breach of the tenancy agreement by him having a cat in the Property, his cat is 9 years old and there have been no issues with it.
47. He has done improvement works at the Property himself while he has been residing there.
48. When asked by the Tribunal, he advised he had raised issues about repairs which had not been addressed. There was a problem with a window. There was a problem with the boiler going into winter. The worktop in the kitchen has been rotten for many years.
49. When cross examined by the Applicants’ representative, the Respondent confirmed that the Property would benefit from repairs and renovations. He agreed also that there would be an additional cost to re-wire the property if he remained within it. He reaffirmed, however, that he is willing to vacate the premises while electrical work is being done.
50. When asked about other areas he had looked for properties, he advised that he has only made one enquiry for other properties. He confirmed again, however, that an increased rent in the region of £1,300.00 - £1,600.00 per month would not be an impediment to him securing alternative accommodation. He pointed out, however, that as far as he is concerned the need for an upgrade at the property at present is due to 15 years of neglect by the Applicants.

FINDINGS IN FACT

51. The Tribunal found the following facts to be established:-
- a) By lease dated 14 September 2009 the Applicants let the Property to the Respondent.
 - b) Prior to the lease being signed a notice in terms of s32 of the 1988 Act was served upon the Respondents. The lease, is accordingly, a short assured tenancy.
 - c) On 16 May 2023 the Applicant served a Notice to Quit and a Notice in terms of s33 of the 1988 Act upon the Respondent.
 - d) A Notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the Local Authority.
 - e) The Property is in need of significant upgrade and repair. In particular, a full electrical re-wire is required, and the kitchen requires to be replaced/upgraded.
 - f) The Applicants intend to carry out electrical re-wiring and to upgrade the kitchen. At the same time, they will take the opportunity to upgrade other parts of the Property.
 - g) The work involved is extensive, expensive and will take a number of weeks in total to carry out. If the work was to be undertaken with the

Respondent in occupation of the Property, the work would take longer and become more expensive.

- h) The Respondent resides at the Property with his daughter. His daughter has now left school and may, at some point, be relocating elsewhere.
- i) The Respondent is able to afford alternative private let accommodation in the local area, or elsewhere.

REASONS FOR DECISION

- 52. The tenancy is a short assured tenancy. Accordingly, when applying for an order for eviction there is no requirement to state any ground upon which the order is being sought. In the current case, the main reason the order is being sought, however, is because of the Applicants' intention to carry out significant refurbishment work at the Property and wishing vacant possession to do so.
- 53. At the time the lease was entered into, the Applicants consciously entered into a short assured tenancy. Until relatively recently, the Respondent would have had no legal defence to the application for an eviction order. While it is noted by Parties and by the Tribunal that the issue of reasonableness now requires to be determined, the state of mind of the parties when entering into the lease in 2009 is a factor to be taken into account.
- 54. The Applicants appear to have affinity with the Property. They wish to upgrade it to make it a "high end" property. It is their ultimate intention to occupy the Property themselves once they both retire.
- 55. The Respondent had previously indicated an intention to vacate the Property. The Respondent, indeed, indicated that to the Tribunal, dependent upon his daughter's exam results and her choice of University, he may well relocate. The Respondent separately confirmed he is well able to afford rental properties in the same area or elsewhere.
- 56. In the circumstances, the Tribunal concluded that it was reasonable that an eviction order be granted.
- 57. The Tribunal took a period of time to consider the evidence and for the members to consider the case and issue its decision. The decision of the Tribunal was intimated to the parties on 29 November 2024. Having regard to the time of year, with the festive period approaching, the Tribunal determined that it was appropriate to defer the date of enforcement of the eviction order until 12 Noon on 31 January 2025.

DECISION

The Tribunal granted an order against the Respondents for possession of the Property under section 33 of the Housing (Scotland) Act 1988.

Order not to be executed prior to 12 noon on 31st January 2025

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.

Virgil Crawford

29 November 2024