



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/24/1545

Re: Property at 1/3 27 Plean Street, Glasgow, G14 0YH (“the Property”)

Parties:

Mr Mike Addison, 1 Allan Park Crescent, Edinburgh, EH14 1LE (“the Applicant”)

Miss Monica Janczak, Mr Grzegorz Kolb, 1/3 27 Plean Street, Glasgow, G14 0YH (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for possession of the property subject to enforcement being suspended until 23 April 2025.

Background

1. By application dated 4 April 2024 the Applicant’s representatives, Belvoir Glasgow North, Partick, Glasgow applied to the Tribunal for an order for possession of the property and the removal of the Respondents from the property under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Applicant submitted a copy of a tenancy agreement, AT5, Notice to Quit and Section 33 Notice with Certificate of Service, Section 11 Notice and proof of intimation together with other documents in support of the application.
2. Following further correspondence between the Tribunal administration and the Applicant’s representatives, by Notice of Acceptance dated 8 June 2024 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 16 September 2024.
4. A CMD was held by teleconference on 17 October 2024. The Applicant did not attend but was represented by Mrs Gillian Hamilton from the Applicant's representatives. The Respondents attended in person. It was agreed that the parties entered into a Short Assured Tenancy that commenced on 29 June 2012 and endured until 29 December 2012 and continued from month to month thereafter. Miss Janczuk also confirmed that the Respondents had been served with a Notice to Quit and Section 33 Notice by Sheriff Officers on 13 December 2023 that required that they vacate the property by 29 February 2024. Miss Hamilton confirmed that a Section 11 Notice had been sent to Glasgow City Council by email on 3 May 2024. Miss Janczuk advised the Tribunal that the Respondents could not afford to pay any more rent as she was a full-time student and Mr Kolb was unable to work due to suffering from depression. Miss Janczuk explained that there had been a period when the Respondents had fallen into arrears of rent because of not receiving benefits but that they were now in receipt of Universal Credit and additional payments and the rent together with a payment of £112.00 per month towards the arrears was being paid to the Applicant. Ms Janczuk said that the Respondents had contacted the CAB who were willing to help and had a meeting arranged to discuss their situation. Ms Janczuk also explained that repairs were needed at the property as the shower was not working but she understood that the Applicant did not wish to carry out updating of the property. Miss Janczuk said that Mr Kolb's mental health had been badly affected following the service of the Notice to Quit and he had been unable to attend meetings for his Universal Credit application and this had resulted in rent not being paid for four months. Ms Janczuk said she thought the Respondents owed about £2500.00 of rent. In response to a query from the Tribunal Miss Janczuk said that the Respondents had not yet had a meeting with the Homeless Unit at the Council to discuss being provided with temporary accommodation but that the Respondents were in the process of arranging that. For the Applicant Miss Hamilton said that the Respondents owed £2531.24 in rent but that the Applicant was only seeking an order for possession not payment of the arrears. Miss Hamilton said the Applicant was hoping to sell the property and not rent it out again. Miss Hamilton said the Applicant did not own any other rental properties. In response to a further query from the Tribunal Miss Janczuk confirmed that the rent had not increased throughout the tenancy and was still £435.00 per month. Miss Janczuk also confirmed that she was a full-time student at college studying Business Administration. She said she did not have any health issues. She explained that Mr Kolb had better days and worse days and at times was unable to leave the property for weeks. The Tribunal noted that the property was a one-bedroom flat. For the Applicant Miss Hamilton said that the Respondents had a history of falling into arrears of rent throughout the tenancy and that the Applicant now felt he had no option other than to get the property back.

5. The Tribunal determined it did not have sufficient information before it to make a decision and adjourned the CMD to a further CMD and issued Directions to the parties.
6. By email dated 4 December 2024 the Applicant's representative submitted the Applicant's response to the Tribunal's directions.
7. By email dated 5 December 2024 the Respondents submitted their response to the Tribunals Directions.

The Case Management Discussion

8. A CMD was held by teleconference on 23 January 2025. The Applicant did not attend but was again represented by Mrs Hamilton and the Respondent attended in person.
9. The Tribunal queried with Mrs Hamilton as to why the Applicant had not provided all of the information requested in its directions. Mrs Hamilton explained this had been due to a misunderstanding on her part and went on to confirm that the Applicant had consulted Ms Katy Hislop of Cochran Dickie, Solicitors, Bridge of Weir who were to be instructed to proceed with the estate agency and sale of the property once vacant possession had been obtained. Mrs Hamilton said that if the Tribunal required any further information she would need to revert back to the Applicant.
10. For the Respondents the Tribunal noted that they had provided information as regards Mr Kolb's ill health and also information regarding their Universal Credit payments, their income and expenditure and their communication with the local authority Welfare Rights Team. Miss Janczuk advised the Tribunal that the Respondents had applied for housing to many Housing Associations and that they were on the local authority list for housing and would be given some priority because of Mr Kolb's ill health but they had not been given a date for being rehoused. Miss Janczuk went on to say that no progress would be made with their application unless and until the Tribunal made an order for possession of the property and they had a date by which they had to move out.
11. Miss Janczuk confirmed that the Respondents rent was being paid in full by Universal Credit together with about £50.00 per month towards the arrears. She thought the arrears were now about £2400.00.
12. Miss Janczuk confirmed that the Respondents had applied to at least six Housing Associations. She also confirmed that she had not yet but was in the process of applying for Adult Disability payment for Mr Kolb and that she was awaiting an appointment for Mr Kolb to meet with a support

worker but that it was difficult for him to meet with people because of his condition. Miss Janczuk confirmed that she had been unable to obtain any discretionary housing payment. She understood the Respondents were not eligible for this. Miss Janczuk also explained that having looked at private rental properties it was apparent the Respondents could not afford these.

13. In response to a query from the Tribunal as to whether or not the Respondents were opposing the order being granted Mr Kolb explained that they needed somewhere to live but that it was difficult to pay the rent for a private rental property and the property they were in was in need of major repairs that could not be carried out with them remaining in the property. Miss Janczuk confirmed that there were issues with the lighting and the wiring needed to be replaced. There had also been problems with the plumbing.
14. For the Applicant Mrs Hamilton said that the Applicant had spent about £3000.00 carrying out repairs to the bathroom and replacing the cooker in November 2024 but that there were issues with the wiring although the EICR was still valid.

Findings in Fact

15. The parties entered into a Short Assured Tenancy Agreement that commenced on 29 June 2012 and endured until 29 December 2012 and continued from month to month thereafter.
16. The Respondents were served with a Notice to Quit and Section 33 notice by Sheriff Officers on 13 December 2023.
17. Intimation of a Section 11 Notice was sent to Glasgow City Council by email on 3 May 2024.
18. The Applicant is 70 years of age and has retired. He no longer wishes to be a landlord.
19. It is the Applicant's intention to sell the property once he obtains vacant possession.
20. The Respondents have accrued rent arrears amounting to about £2400.00.
21. The Respondents' rent is currently being paid in full together with a contribution towards the arrears of about £50.00 per month from Universal Credit.
22. The Respondent Mr Kolb suffers from depression and hypertension and is unable to work.

23. The Respondent Miss Janczuk is a full-time student in receipt of a student loan.
24. The Respondents have applied to the local authority and several local Housing Associations for housing.
25. The Respondents have been told they will receive some priority for housing due to Mr Kolb's ill health but that no progress with their application will be made unless and until the Tribunal makes an order for possession of the property.
26. The Respondents cannot afford to move to another private rental property.

Reasons for Decision

27. The Tribunal was satisfied from the documents submitted and the oral submissions of both parties that the parties entered into a Short Assured tenancy that commenced on 29 June 2012. The Tribunal was also satisfied that a valid Notice to Quit and Section 33 Notice was served on the Respondents by Sheriff Officers on 13 December 2023 and that proper intimation of the proceedings was given to Glasgow City council by way of a Section 11 Notice.
28. The Tribunal was therefore satisfied that procedurally the criteria for granting an order for the eviction of the Respondent from the property had been met subject to it being reasonable for such an order to be made. In reaching a decision on reasonableness the Tribunal noted that neither party took any issue with the other party's position as stated by them. The Tribunal therefore had to balance the needs of the Applicant with the needs of the Respondent in arriving at a decision. On the one hand the Applicant was getting older and had retired and no longer wished to be a landlord and wished to sell the property. On the other hand, the Respondent Mr Kolb suffered from depression and would find moving difficult. In addition, the Respondents had accrued not insignificant rent arrears although these were not currently being pursued by the Applicant. The Respondents had been told that they would receive some priority for rehousing because of Mr Kolb's ill health but that no progress would be made until they had been given a date for their removal. It was apparent that the Respondents could not afford to move into another private rental property due to their limited income and their dependency on benefits. The Tribunal also took into account in reaching its decision the condition of the property and the fact that it was in need of repair that would require the decanting of the Respondents from the property as the work could not be done with the Respondents still living there. After carefully considering all of the circumstances of both parties the Tribunal was satisfied that it was reasonable to grant the order sought by the Applicant but that it should not be enforced for a period of three months to allow the Respondents sufficient time to liaise with the local authority and local

Housing Associations in order that suitable accommodation can be found to meet the Respondents' needs.

Decision

29. The Tribunal being satisfied it had sufficient information before it to allow it to make a decision without the need for a hearing finds the Applicant entitled to an order for possession of the property subject to enforcement being suspended until 23 April 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.

Graham Harding

Legal Member/Chair

23 January 2025
Date