



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/21/3200

Re: Property at 56 Findowrie Place, Dundee, DD4 9NR (“the Property”)

Parties:

Ms Tracey McFee, 5 St Fort Place, Wormit, Newport-On-Tay, Fife, DD6 8NT (“the Applicant”)

Mr Graham Fyfe, Mrs Laura Fyfe, 56 Findowrie Place, Dundee, DD4 9NR (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Frances Wood (Ordinary Member)

Decision

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

Background

1. This is an application in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The Applicant is seeking an order for recovery of possession in terms of section 33 of the Act.
2. The parties entered into a Short Assured Tenancy between 14th July 2017 until 31st January 2018. The rent payments of £695 per month were due on the 1st day of each month in advance.
3. The Tribunal had before it the following documents:
 - a. Application dated 28th December 2021.
 - b. Short Assured Tenancy Agreement signed 14th July 2017.
 - c. Form AT5 signed by the parties on 14th July 2017.
 - d. Notice to Quit dated 5th February 2021 requiring vacant possession as at 8th December 2021 with proof of recorded delivery.

- e. Section 33 Notice dated 5th February 2021 requiring vacant possession as at 8th December 2021 with proof of recorded delivery.
- f. Title deeds with reference ANG23401.
- g. Section 11 Notice noting date of raising proceedings 22nd December 2021.
- h. Rent account from 1st April 2020 to 1st February 2021.

The Case Management Discussion

- 4. A Case Management Discussion (“CMD”) was held on 7th April 2022 at 10am by teleconferencing. The Applicant was not present but was represented by Mr Adam Gardiner, Senior Solicitor, Lindsays. Mr Stewart Forest, Trainee Solicitor, was also present but took no part in the CMD. The Respondents were not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Tribunal considered the Application. The Respondents did not submit any representations prior to the CMD by the date specified in the letter to them of 22nd February 2022. The Tribunal noted that an email had been received from Mrs Fyfe just prior to the CMD. It stated that she had been unable to attend due to being called in to work in her hospital ward. She offered £800 per month in rent payment. She raised issues of reasonableness.
- 5. Mr Gardiner noted that the Respondents have not engaged during the whole of the process until just prior to the CMD. The Applicant has been trying to engage with the Respondents for 13 months without success. Mr Gardiner has been able to take instructions from the Applicant. Her position has not changed. She still wishes to sell the Property. Mr Gardiner was unable to confirm if Mr Fyfe was still living in the Property.
- 6. The Tribunal considered that it was a matter in the interest of justice to allow the Respondents to attend a hearing to address the issues of reasonableness.
- 7. The Tribunal raised that the Applicant was to address the following questions at the hearing :-
 - a. How many properties does the Applicant own, excluding her own residential property?
 - b. If the Applicant owns more than one property that she lets out why is she electing to sell this property?
 - c. Is the Property subject to a mortgage?
 - d. What impact has there been on the Applicant to her health or wellbeing as a result of retaining the Property?
- 8. The Tribunal raised that the Respondents was to address the following questions at the hearing:-
 - a. What steps has the Respondents taken to negotiate with the Applicant?
 - b. Are both Respondents still living in the Property?
 - c. What steps have the Respondents taken to look for alternative accommodation since the Notice to Quit was served on 5th February 2021?

- d. Is £800 per month an affordable price for the Respondents to pay consistently? How can this affordability be evidenced?
 - e. Who resides in the Property?
 - f. What are the issues of reasonableness that would prevent the Tribunal from granting an order for eviction?
9. The Tribunal noted that they reserved the right not to be limited to the scope of the above questions.
10. A hearing date was fixed for 18th May 2022. This did not proceed as the Applicant's agent emailed on 19th April 2022 to advise that the Applicant would be out of the country and had requested a postponement. This postponement was granted. A new date was fixed for 8th September 2022.
11. A hearing date was fixed for 8th September 2022. This did not proceed as the Respondents had emailed on 1st July 2022 to ask for a postponement due to having to attend a family funeral in Wales on the date of the hearing. This was granted and a new date was fixed for 3rd October 2022.

The Hearing

12. A hearing was held on 3rd October 2022 at 10am by teleconferencing. The Applicant was not present but was represented by Mr Adam Gardiner, Senior Solicitor, Lindsays. Ms Kirsten Boeptcher, Trainee Solicitor, was also present but took no part in the CMD. The Second Named Respondent, Mrs Laura Fyfe, was present. She appeared on behalf of both Respondents.
13. Mrs Fyfe gave evidence that she did not object to the Applicant selling the Property but she had nowhere to go with her family. She lives in the Property with her husband and her daughters who are 19 and 8. Her elder daughter is in full time education at college and financially dependent on her. She is very concerned that if she were evicted she would be put into homeless accommodation with her family. She has applied to Dundee City Council and local housing associations. She has a gold rating with Dundee City Council but has not been offered any properties yet. She has said she would accept a property in any part of the city. Mrs Fyffe has applied for 4 private tenancies since December 2021. Most of the other private tenancies advertised have been for 2 bedroom properties and not 3 bedrooms which she needs. These 4 properties have been in proximity of her younger daughter's school. Mrs Fyfe said that prior to that she had not been dealing with the situation. Her family had significant personal matters that they were dealing with. She had accrued arrears as her husband had lost his job. She is now working more hours which average to around 34 hours per week as a nurse. Her husband is a plumber and has now a secure full time job. Her mother helped pay the arrears off in December 21 and she has maintained the rent since then. Mrs Fyfe said that she was willing to pay more rent of up to £800 per month. She has worked out her money and can afford to pay that consistently. As a family they have reduced their outgoings.

14. Ms McFee told the Tribunal that she had been working through covid in the NHS as an emergency dentist. She reevaluated her personal matters during that time. She was not entitled to any government help as she owned more than five properties. She decided to retire and wants to sell some of her properties so she can reduce the level and number of mortgages she has. She has considered leaving the rental market but has decided to gradually disinvest. She owns 7 properties that she rents out in addition to her own residential property. One she is going to sell in April 2023 which is in Fife. The tenant has indicated that she is to leave then. She said that she has one other property in Dundee in addition to the property which is the subject of this case and four in St Andrews. The St Andrews properties are student lets on an HMO basis. She is very focused on reducing her portfolio. She has found the experience of letting out the properties over the covid pandemic particularly stressful. She elected not to enter into a new mortgage for this property as she did not want to be locked into a new mortgage and have a financial penalty for selling soon after. Her monthly mortgage payments have risen from £220 per month to £398 per month. She has other ongoing costs associated with letting a property. The fact this property had arrears on it and the difficulties in engaging the tenant in communication had added to Ms McFee's stress and affected her wellbeing. She is aware of the Respondents offer of increasing the rent payments to £800 but she is now settled on selling the Property as the start of reducing her portfolio. She told the Tribunal that these properties are her only form of investment and are there for her retirement. Her income has dropped significantly since she retired and this has been a motivation for selling the Property. She has another property in Dundee that is rented by a single parent who has had difficulties at points but she has not looked to remove her. Though this tenant had communicated more and caused her less stress when in arrears. The property that is subject to this action had reached the point of the mortgage that made it viable to sell it.

15. Mr Gardiner said that he did not wish to call any other witnesses.

16. The Tribunal gave the evidence great consideration and was sympathetic to the circumstances of both parties. However, it was clear from the evidence that the Applicant did intend to sell the Property. She had not been motivated to receive a higher rent but was motivated by the end of the mortgage agreement. The Applicant has had issues with another tenant but has not considered selling that property. That tenant has been communicating with her and has had 3 years longer as a tenant than Mrs Fyfe, whose tenancy has caused her more stress. By the Second Named Respondent's own evidence, she did not communicate well when she was unable to pay the rent. This was at least in part due to significant personal problems within her family. The Second Named Respondent accepts that she has to move but has concerns about where she is to move to. She is particularly worried about moving her family into a homeless shelter. She had not made great efforts to find another tenancy, no doubt because of her personal circumstances but is now actively looking for another property. The Tribunal considered that the application was undertaken lawfully and there were no issues of reasonableness to prevent an order for eviction being granted.

Findings in Fact

17. The parties entered into a Short Assured Tenancy on 14th July 2017 for a 6 months period until 31st January 2018. It was then continued by tacit relocation on a 201 day basis thereafter. An AT5 was signed by both parties on the same date as the lease. The rent payments of £695 are due on the 1st day of each month.
18. The Housing and Property Chamber received an Application on 28th December 2021.
19. A Notice to Quit and section 33 notice were served upon the Respondents on 5th February 2021.
20. The Applicant did not extend her fixed rate mortgage when it expired in July 2022 as she did not wish to lock herself into a new mortgage as she wished to sell the Property as this represented a good opportunity to improve her financial situation. Her properties are her only source of investment.
21. The Applicant does not wish to take the higher rate of rent offered by the Respondents as she wishes to sell the Property. She has instructed Lindsays to sell the property as soon as she has vacant possession. She is unable to sell the other properties at present as she does not know when those mortgages end and does not want to incur penalties or be potentially subject to Capital Gains Tax. She intends to sell a further property in April 2023 when her tenant leaves.
22. The Respondent has a gold rating for housing allocation by Dundee City Council. She is willing to accept one of their properties in any part of Dundee. She has also registered with local housing associations. In terms of private tenancies she has restricted her search to allow her 8 year old daughter to remain at the same school. She has applied for 4 private tenancies since December 2021 but could extend her search more widely and is willing to move her daughter's school if necessary.
23. Whilst there were arrears on the Property these were cleared in December 2021 and the rent account has been kept up to date since.

Reasons for Decision

24. The Tribunal was satisfied that it was the Applicant's intention to sell the Property regardless of the arrears which had previously been on the tenancy. The Tribunal was satisfied that there were no other issues of reasonableness before them and that the notices had been served in an appropriate manner and that a Short Assured Tenancy had been entered into by the parties. Given this the Tribunal was satisfied all appropriate paperwork had been served and the Order for repossession was granted.

Decision

25. The Applicant is entitled to an Order for recovery of possession.

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.



Gabrielle Miller

Legal Member/Chair

3rd October 2022

Date