



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 (“the 1988 Act”)

Chamber Ref: FTS/HPC/EV/21/1278

Re: Property at 160 Muirdrum Avenue, Glasgow, G52 3AP (“the Property”)

Parties:

Miss Amy Carlin, 26 ArnholmePlace, MossPark, Glasgow, G52 1PS (“the Applicant”)

Miss Lyndsay Callaghan, 160 Muirdrum Avenue, Glasgow, G52 3AP (“the Respondent”)

Tribunal Members:

Steven Quither (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of the parties)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application is to be DISMISSED.

1. BACKGROUND

This is an application to bring to an end a Short Assured Tenancy, dating from 11 February 2016 for 6 months and continuing thereafter by tacit relocation on a month to month basis. In terms of s33 of the 1988 Act as amended by the Coronavirus (Scotland) Act 2020, the Tribunal requires to be satisfied not only that the formal requirements of said section have been complied with but also that it is reasonable to make the order for repossession. Accordingly, there is now an element of discretion and a greater burden on a landlord looking to recover possession under that section than in its previous, unamended version. The supporting documentation for the application confirmed that appropriate notice periods had been given in respect of the Notice to Quit and s33 Notice and that the appropriate local authority had been notified of the application in terms of s11 of the Homelessness etc. (Scotland) Act 2003.

In her application, the Applicant stated that she wished repossession in order to sell the Property.

However, proof of her title was unclear, in that the Land Certificate available seemed to relate to a neighbouring property (162 Muirdrum Avenue), which issue was not able to be clarified prior to the first CMD on 22 July 2021. Accordingly, in the Tribunal's view, the issues to be resolved appeared to be three-fold, namely confirmation of the Applicant's title to the Property, what evidence there was, or might be, available to allow the Tribunal to be satisfied as to the stated intention of the Applicant to sell the Property and the circumstances of the Respondent, all of which would enable the Tribunal to decide whether it would be reasonable to make the order sought.

2. CASE MANAGEMENT DISCUSSIONS ("CMD"(s)) on 22 JULY & 14 SEPTEMBER 2021

At both of these CMDs, the Applicant was represented by her Agent, Laura Houston, from Houstons Home Lettings Limited, Hillington. The Respondent was not present nor was she represented on both occasions. The Tribunal was satisfied she had received appropriate notice and intimation of both CMDs, as vouched by sheriff officers' certificates of intimation. Since she was not present nor represented on each occasion, no facts relating to her circumstances were capable of agreement.

At the CMD on **22 July**, the Tribunal enquired of Ms Houston whether she was aware of the title position. She advised that so far as she was aware, the Applicant had inherited the Property from her grandparents but did not know what steps, if any, had been taken to finalise her title to it.

So far as the proposed sale of the Property was concerned, she understood that the Applicant wished to sell the Property to help finance purchase of another home, which she would share with her partner and their child.

Accordingly, she sought to sell the Property to realise an asset and enter a new chapter in her life.

So far as she was aware, the Respondent was living in the Property with her child, who was of school age.

She advised she would be able to make further enquiry to clarify and confirm the position regarding the Applicant's intention to sell the Property. When asked if some evidence of that intention could be produced, perhaps in the form of confirmation of instructions received by solicitors and/or estate agents and/or confirmation in writing or affidavit form from the Applicant, she advised she thought this would be readily available and undertook to provide same, if afforded the opportunity to do so.

In all of the circumstances, the Tribunal considered it just to fix a further CMD to enable the Applicant to provide further information to the Tribunal about the Applicant's title to the Property and her intention to sell it and assist the Tribunal in deciding whether it would be reasonable to make the order for repossession sought.

14 September 2021 at 10am was identified as a suitable date and Ms Houston undertook to provide the further information just as soon as she could prior to then. In view of the possibility of a repossession order being made on that date, intimation of it on the Respondent was to be made by sheriff officer.

On **14 September**, representation/attendance was similar to the previous CMD. Confirmation of sheriff officer intimation to the Respondent was

available, but again she failed to attend or be represented and, accordingly, there was no information available from, or on a first hand basis about, her. Ms Houston produced correspondence from Mains, Estate Agents, confirming they had been contacted by the Applicant with regards to selling the Property. In relation to the title position, regrettably the position did not seem to have progressed since the last CMD or, if it had, no detail about progress had been made available to Ms Houston. She very candidly confirmed to the Tribunal that she had brought this matter to the Applicant's attention and the attention of the Applicant's mother too on several occasions, but no further information had been forthcoming to her to provide to the Tribunal, leaving her in a difficult position. The Tribunal had no reason to doubt her attempts to focus the Applicant's mind on this issue had been reasonable and proportionate and that any failure by the Applicant to appreciate the fundamental difficulty the title issue posed was not due to any lack of effort on Ms Houston's part. However, having carefully considered the position and the very difficult position the Applicant's representative found herself in, the Tribunal was satisfied it would be just to afford the Applicant one further, final chance to satisfy it regarding her title to the Property but that in the circumstances it was appropriate to issue a Direction for her to do so.

28 October 2021 at 10am was identified as a suitable date for a further CMD and Ms Houston undertook to advise the Applicant of it.

The Tribunal's Notes from this second CMD made clear the Tribunal's view that if the Applicant did not have title to the Property, she did not have title to bring these proceedings, which would accordingly fail. Accordingly, if satisfactory confirmation of the title position was not available for consideration by the Tribunal on this further date, exceptional reason would have to be given if the application was not to be dismissed.

The Tribunal's Direction reflected this view also.

3. CASE MANAGEMENT DISCUSSION on 28 OCTOBER 2021

Neither party appeared or was represented, despite the CMD not calling till well after its allocated starting time of 10am. Further enquiry confirmed that there had been no response to the Tribunal's Direction and furthermore that Ms Houston had contacted the Tribunal by e-mail on 23 September to advise that she was no longer representing the Applicant in these proceedings and had advised her of this and that she should contact the Tribunal direct for any further information. Following receipt of that e-mail, the Tribunal also e-mailed the Applicant directly to advise her of the further CMD. However, as previously stated, she was not in attendance or represented at the CMD.

4. REASONS FOR DECISION

Despite the intimation on the Applicant of her agent's withdrawal of acting, given in sufficient time for her to obtain further representation and/or contact the Tribunal in order to ascertain how she could appear herself, the Applicant appeared to the Tribunal to have taken no steps to do so or provide the Tribunal with any information regarding the outstanding title matter, leaving the Tribunal to decide whether it was satisfied she had co-operated with it to such an extent that it could comply with its overriding objective to deal with the proceedings justly and fairly, in terms of Regulation 27(2) of the First -tier Tribunal for Scotland

Housing and Property Chamber (Procedure) Regulations 2017. The Tribunal came to the conclusion that it was not so satisfied and that accordingly the application would be dismissed.

5. DECISION

To dismiss the proceedings as narrated, having regard to the terms of Regulation 27(2) of the First -tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

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.



SR QUITHER

28 OCTOBER 2021

Legal Member/Chair

Date