



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 of the Housing (Scotland) Act 1988 (“the Act”)

Chamber Ref: FTS/HPC/EV/21/1348

Chamber Ref: FTS/HPC/EV/21/1349

Re: Property at 764 Pollokshaws Road, Flat 1/1, Glasgow, G41 2AE (“the Property”)

Parties:

Mr Mohammed Alam, 738 Pollokshaws Road, Glasgow, G41 2AE (“the Applicant”)

Miss Janet Ross, 764 Pollokshaws Road, Flat 1/1, Glasgow, G41 2AE (“the Respondent”)

Tribunal Members:

Jim Bauld (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

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

that the application for the order for possession should be granted in the application under Chamber Reference FTS/HPC/EV/21/1349

and

that the application for the order for possession should be refused in the application under Chamber Reference FTS/HPC/EV/21/1348

Background

1. Case reference number FTS/HPC/EV/21/1348 is an eviction action raised by the applicant seeking an eviction order in terms of ground 15 contained within schedule 5 of the Housing (Scotland) Act 1988 (“the 1988 Act”)
2. Case reference number FTS/HPC/EV/21/1349 is a second and separate eviction action raised by the applicant seeking an eviction order in terms of ground 1 contained within schedule 5 of the Housing (Scotland) Act 1988
3. This decision relates to the two 2 separate applications for eviction orders raised by the same applicant against the same respondent relating to the same tenancy. A separate application under reference FTS/HPC/CV/19/3956 was raised in which the applicant sought an order for payment in respect of rent arrears. A separate decision will be issued in respect of the payment application.
4. All three applications have previously been the subject of case management discussions and hearings at earlier dates.
5. At a case management discussion which took place on 20 January 2022, the tribunal determined that all three applications should be adjourned to a date when a hearing could take place on an in person face-to-face basis.
6. The tribunal thereafter fixed a date for the hearing of these three applications on 29 April 2022. Appropriate information of the date and time of the hearing was given to the parties.

The hearing

7. The hearing took place on 29 April 2022. The applicant attended and was represented by his solicitor, Mr Hussain from Legal and Legal, 62 Nithsdale Road Glasgow. The respondent attended personally and was not represented.
8. The tribunal listened to submissions from the solicitor from the applicant, noted evidence from the Applicant and thereafter noted the response from the respondent.

Findings in fact

9. The Applicant and the respondent as respectively the landlord and the tenant entered into a tenancy of the property by an agreement dated 30 April 2010
10. The tenancy was a short assured tenancy in terms of the Act

11. The agreed monthly rentals of the property was £495 per month
12. On 27 January 2021, the applicant served upon the respondent a notice to quit, a notice under section 33 of the Housing (Scotland) Act 1988 and the notice of proceedings for possession required by section 19 of the Act. This notice was the Form AT6 and set out the ground for eviction which the landlord intended to rely upon. The ground for possession set out in this Form AT6 was the ground contained in paragraph 1 of schedule 5 of the 1988 Act ("ground 1") All of these notices had an effective date of 30 April 2021
13. On 25 March 2021 the applicant served a further Form AT6 upon the respondent again with an effective date of 30 April 2021. The ground of possession upon which this form was based was the ground contained in paragraph 15 in schedule 5 of the 1988 Act ("ground 15")
14. The relevant notices were served upon the respondent by sheriff officers
15. The relevant notices were in the appropriate and correct formats required by law
16. The applicant currently occupies a separate flat in Albert Avenue in Glasgow with his parents, his wife and his two children
17. The flat in Albert Avenue is significantly overcrowded and the applicant intends to live in the property at 764 Pollokshaws Road with his wife and children if an order for possession is granted

Discussion

18. The orders for possession sought by the landlord were based on two separate grounds specified in the Act and properly narrated in the notices served upon the tenant.
19. The tribunal was satisfied that the notices had been served in accordance with the terms of the Act and that the landlord was entitled to seek recovery of possession based upon the grounds and the relevant terms of the tenancy agreement which had been lodged with the application. The tribunal heard both applications together and requires to determine each ground in turn

Discussion relating to application for possession on Ground 15

20. Ground 15 relates to a situation where the landlord alleges that the tenant has behaved in an antisocial manner, that is in a manner which has caused nuisance or annoyance to other persons
21. The evidence that was presented to the tribunal both in the documents submitted with the application and provided orally during the hearing by the

applicant contained no relevant evidence of any antisocial behaviour by the tenant at any time. They contained various unsubstantiated allegations that the respondent had created noise at certain times. At its highest the allegations involved a suggestion that a former partner of the respondent had attended at the property and threatened her and that police attended to have him removed.

22. Nothing that was presented to the tribunal remotely justified the granting of an order based on ground 15. The tribunal finds that there is no evidence which shows that this ground is established as a matter of fact .
23. The tribunal had and has no hesitation in refusing the application seeking the order under ground 15

Discussion relating to application on Ground 1

24. The applicant also sought an order based on ground 1. That ground allows a landlord to recover possession of the property where the landlord can demonstrate to the tribunal that he requires the house as his only or principal home .
25. The evidence from the applicant was that he wished to have the tenant removed in order that he could occupy the property. He indicated he is currently living in another flat in Albert Avenue in Glasgow. He occupies that flat along with his wife and his two children, who are twin girls aged nine years. Additionally the flat is occupied by the applicant mother and father.
26. This flat contains two bedrooms, a living room, kitchen and bathroom. It is accordingly overcrowded given it is currently occupied by four adults and two children (twins aged 9 years old) .
27. The flat at 764 Pollokshaws Road is also a two bedroom property and would provide suitable and sufficient accommodation for the applicant, his wife and two children. It would allow him and his family to remove from the flat currently occupied with his parents. At present two adults are required to sleep in the living room of the flat in Albert Avenue.
28. The flat at 764 Pollokshaws Road is sufficiently close to the current flat in Albert Avenue that his children would remain at the same primary school. Moving to the flat at 764 Pollokshaws Road would alleviate the severe overcrowding and stress being suffered by the applicant and his family in the current accommodation.
29. The respondent indicated to the tribunal that she wishes to remain in the flat at 764 Pollokshaws Road. It has been her home for almost 14 years. She indicated that she lives there on her own and has always done so. She accepted that in February 2022, she had been temporarily removed from the flat and was offered alternative housing by the social work department. She stayed there for about a fortnight before she returned to the flat at 764 Pollokshaws

Road. It was her position that the landlord was simply using this ground as an excuse to remove her and that he had no intention of moving there with his family .

30. The tribunal questioned the respondent with regard to the current condition of the property. The legal member of the tribunal had recently been part of another tribunal which dealt with a repairing standard application by the respondent against the applicant. The legal member was aware that a repairing standard enforcement order had been made requiring the landlord to carry out various repairs to the property. The respondent was asked whether moving from this flat given its current state of repair would actually be beneficial to her health, both physical and mental. She did not accept that to be the case.

Reasons for decision on ground 1

31. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties
32. The Tribunal has a duty, in such cases, to consider the whole of the circumstances in which the application is made, it follows that anything that might dispose the tribunal to grant the order or decline to grant the order will be relevant. This is confirmed by one of the leading English cases, *Cumming v Danson*, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in an oft-quoted passage:

“[I]n considering reasonableness ... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad commonsense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account”.

33. The tribunal having heard the evidence of the parties required to consider whether the ground was established and if established whether it was reasonable to grant the order sought
34. In applications under ground 1, the tribunal is also required to consider whether in terms of the ground the landlord had given notice before the beginning of the tenancy that an order for possession might be sought on this ground.
35. No documentary evidence was produced to confirm that such notice had been given. The applicant indicated that he believed such notice had been given by his letting agent at the time.

36. Even if no notice has been given, the relevant provisions of the 1988 Act allow the tribunal to dispense with the requirement of this notice if the tribunal is of the opinion that it is reasonable to do so.
37. The tribunal is unable to determine whether or not a notice was actually given. The respondent was unable to state that it had not been given.
38. However, the tribunal has taken the view that either the notice was given and that if it was not, given the lengthy passage of time since the tenancy started, that it would be reasonable to dispense with the notice and that it would allow the landlord to proceed under this ground.
39. The tribunal noted that had this tenancy been a private residential tenancy under the newer legislation (Private Housing (Tenancies) (Scotland) Act 2016) which applies to private sector tenancies then a similar ground could have been used and there was no requirement to give any prior notice about the possible use of that ground.
40. Accordingly the tribunal came to the view that the ground in this case was available and that the tribunal could then determine whether it was reasonable to grant the order.
41. In considering reasonableness the tribunal requires to balance the rights of both parties. The tribunal requires to determine where the balance falls in making its order. The tribunal noted the unchallenged evidence of the applicant that he and his family are currently living in severely overcrowded accommodation. The tribunal accepted the applicant's evidence that living in this accommodation is causing serious problems to his family and in particular to his young children. The tribunal accepted that granting an order to remove the respondent may have a significant impact on her. They accepted that she has been in the property for a considerable period of time and was generally happy there despite the current poor condition of the property.
42. In this case the tribunal finds that it is reasonable to grant the order. The tribunal decided, in balancing the various rights of both parties, that the balance fell in favour of the landlord and his family and that the order for recovery should be granted. In recognising the impact the order will have on the respondent, the tribunal has decided the order should not be enforceable immediately but should be delayed for period of time. That period should allow the respondent to seek the assistance of the local council via their social work department to find alternative accommodation which will be suitable for her.
43. Accordingly the tribunal will grant the order for recovery but will indicate that it cannot be enforced until 1 September 2022

Decision

The order for recovery of possession is granted in the application under reference FTS/HPC/EV/21/1349

The application for the order for possession is refused in the application reference FTS/HPC/EV/21/1348

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.

James Bauld

Legal Member/Chair

6 June 2022
Date