



**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/21/1880

Re: Property at 31/4 Prestonfield Terrace, Edinburgh, EH16 5EE (“the Property”)

Parties:

Mrs Susan Heather Blaikie, 36 Queens Crescent, Edinburgh, EH9 2BA (“the Applicant”)

Ms Jijun Ye, 31/4 Prestonfield Terrace, Edinburgh, EH16 5EE (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Ms J Heppenstall (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted in favour of the Applicant, said order not to be executed prior to 12 noon on 5th July 2022.

Background

1. This is an application received on 5th August 2021 and made in terms of Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”) seeking an order for possession. The Applicant’s representative lodged a copy of the short assured tenancy agreement between the parties which commenced on 27th March 2014, Form AT5, Notice to Quit and Section 33 notice dated 21st and served 22nd January 2021, certificate of execution, and section 11 notice with evidence of service.
2. By emails dated 15th and 16th November 2021, the Respondent’s representative lodged written representations and productions, including correspondence from support workers, the Respondent’s GP and social worker, and a local authority housing private rented sector housing officer. The Respondent’s representative also lodge the Respondent’s Legal Aid certificate.

3. A Case Management Discussion (“CMD”) took place by telephone conference on 26th November 2021. The Applicant was not present and was represented by Ms Nicola Caldwell, Paralegal. The Respondent was present and was represented by Ms Hazel Bon, Solicitor.
4. The Tribunal heard that the Applicant requires the Property urgently for her son, G, who is a twin. Both sons have disabilities. The Applicant’s husband has had to take early retirement to help care for their sons. The Applicant is feeling low about the situation, and it would help her and her family if her son could move into the Property with support as soon as possible.
5. Ms Bon said it was accepted that the contractual tenancy has come to an end by service of the documentation, however, it would not be reasonable to grant an order for possession, given the circumstances of the Respondent, who has a number of mental and physical health problems which have a substantial and long term adverse impact on her ability to carry out day-to-day activities, and as such constitute a disability in terms of s6 of the Equality Act 2010. Her health is likely to deteriorate if she is evicted and made homeless. Her conditions mean that she has been unable to find alternative accommodation.
6. The CMD was continued to an evidential hearing.
7. By emails dated 3rd and 21st March 2022, the Applicant’s representative lodged a second and third inventory of productions, including medical and social work evidence.
8. By email dated 22nd April 2022, the Respondent’s representative lodged a witness list.
9. By email dated 22nd April 2022, the Applicant’s representative lodged a witness list and informed the Tribunal as follows:

Parties have been in discussions and have agreed evidence in this case, which we hope will assist the Tribunal. Parties have agreed the contents of the Applicant’s Second and Third Inventories (productions 8-15) and the Respondent’s First and Second Inventory (productions 1-5).

The Hearing

10. A hearing took place by telephone conference on 26th April 2022. The Applicant was in attendance and was represented by Ms Kirstie Donnelly, Solicitor. The Respondent was in attendance and was represented by Ms Hazel Bon, Solicitor. The Respondent was supported by Lisa Chan and Morven Lawson, Support Workers.
11. The representatives informed the Tribunal that the Respondent’s evidence would be given first.

Evidence of the Respondent

12. The Respondent is unemployed and on benefits. She described living at the Property for more than 5 or 6 years. She confirmed the report from her GP, Dr Bertram was accurate, and that she suffers from mental health and gynaecological problems. Her mother has passed away since the report was written. Her father passed away in 2020. Losing both parents has affected her wellbeing. She is now taking additional medication for panic attacks. She described a low mood which was sometimes suicidal, poor memory and confusion, and a chaotic situation. She said she often has to call the GP when she needs help and does not know what to do. She has been contacted recently by Thrive and hopes to see them regularly for support. The Respondent said Covid-19 had made her situation more difficult as she was scared to go out in public.
13. The Respondent said it would have been very difficult to start looking for somewhere else to live if she did not have support from Lisa and Morven. She has difficulty following things up. She described her memory as broken and found it difficult to speak to people during the pandemic. The Respondent said she continues to have a low mood all the time which makes daily living so difficult. She loses focus and often does not want to wake up.
14. The Respondent said Production 1, the report from Family and Health Support, was an accurate reflection of the support she is receiving. Her support workers have been very patient. She has recently started to bid for flats on the Edinburgh Council website with assistance. She has not been successful yet. She said she was really scared of the idea of moving. She agreed she had not presented as homeless because she was legally entitled to live in her current tenancy. She has not made any applications for private rented housing.
15. The Respondent thought she had got a letter from Thrive, a short term mental health service, but could not remember where she had put it. She has asked her GP to refer her again as nothing had happened. She has asked to be referred to other avenues of support for her mental health.
16. The Respondent said she was likely to get temporary accommodation from the local authority if she was made homeless. This may be shared accommodation. She felt she would be very frightened and would struggle in shared accommodation. She said she could not imagine it. It would be more difficult to manage her health issues. Asked if it would help her if any order for possession was delayed, the Respondent said this would help her a lot by giving her more preparation time, allowing her to get her some help in getting organised and getting support and not feeling in despair again. She hoped this would be considered.

Cross-examination of the Respondent

17. The Respondent agreed that she had only recently begun to engage in a meaningful way and that she had been struggling for a while. She started bidding for properties two or three weeks ago, and had bid for six properties so far. She had been getting help for almost a year. She did not think she would be applying for any private rented tenancies. She has no family in the area but would wish to stay in the area to be near her GP. She accepted that her support workers and GP could still assist if she was at a different address. She was unable to say if the new medication is helping. The Respondent said more time would help her physically and mentally. She accepted the Applicant needed the Property for her son. She was not sure if she had been informed of this at the start of the tenancy in 2014. She thought the Applicant had maybe mentioned it but no finer details were given. She did not think anyone could stay in a rented property forever.
18. Responding to questions from the Tribunal, the Respondent said she had not met the local authority face to face. She had spoken to a housing officer on the phone in March 2022. She thought they discussed the options but could not remember fully. There had been discussion about presenting as homeless or waiting for the Tribunal hearing. The six bids for housing were made for various areas, and three bids can be made each week. The Respondent said the reason she was not looking for private rented housing was because her support workers had said any such let would be short term and she would have to go through this again.

Evidence of the Applicant

19. The Applicant is a full time carer for her twin 29 year old sons, G and E. She purchased the Property in 2013. It was within walking distance of her home address and situated in a quiet cul de sac. She and her husband considered it might be suitable for her sons to live in with support. Borrowing money was easier at that time. Both she and her husband were working. There had been an inheritance from an aunt of a sum to put towards buying property for their sons. At that time, the sons were not ready to live independently so it was decided to let the Property short term. The Respondent had told the Applicant she was looking for a property for around a year. She was shown round the Property with her friend who was advising her. The friend was a local councillor and had a housing background. The Respondent was aware of the circumstances and often asked after the Applicant's sons.
20. The Applicant explained the life-long health difficulties experienced by her sons. They require constant support. They have recently become unable to be in the same room as each other without bickering and fighting. Professionals believe the sons should not be living together or at home. The plan is for G to live in the Property. He asks about this constantly and has been upset by the delay. The family is now in crisis. The situation is no longer manageable.

21. G is sensitive to noise, and the position of the Property, at the end of a cul de sac, would mean there would be minimal disturbance. The Property has a garden. Gardening is very important to G.
22. The Applicant said it was expected there would be an overnight package of support initially for G if he moved into the Property, but full plans cannot be made until the Property is available. G desperately wants his own life. Due to the situation with E, G is now spending more and more time in his own room.
23. The Applicant said her own health and that of her husband has suffered. Her husband had a pulmonary embolism at Christmas 2019, and she had two cataracts removed and could not drive. There were problems at the flat and the Respondent had to be re-housed at New Year, then there was the Covid-19 pandemic. She told the Respondent she could no longer cope with all the problems at home and being a landlord. She is now suffering from a low mood and has sought a counselling recommendation. She has started to see a homeopath. She is suffering from some ankle and foot pain. Some days, she feels overwhelmed with responsibility for everyone.
24. In 2020, the Applicant appointed a management agent for the Property as she could not cope with the responsibility of looking after it. She does not intend to be a landlord again. Asked whether she was treating the Respondent differently due to her disabilities, the Applicant said she was not. The Property was needed for her son. They needed to get him settled. There are no plans to put anything else in place if they cannot recover possession. They will eventually move to a smaller property, but they need to know how many rooms they will require. She feels the family are all pretty close to the edge currently and she hopes they will not have to get to the point of having to have E looked after elsewhere on a full time basis.

Cross-examination of the Applicant

25. The Applicant said, although the intention had been to let for a short period and she had not considered a longer term let, she and her husband were working and their sons required full-time care. Time passed and the situation with the Property was never revisited. She was coping with the situation and there was no reason to address it. G had asked to move into the Property before she felt he was ready. He is never going to be ready, but the situation would be manageable with enough support.
26. The Applicant said no other steps had been taken to find somewhere else for G to live. It was her understanding there would not be housing available and the only way her son could move out would be if she provided a property. It was never the plan to apply to the local authority. She did not accept there were any other arrangements that could have been made that would have avoided making the Respondent homeless. It would be increasingly difficult for G to remain at home and it would not be reasonable if he did not get the chance to move into the Property. It was reasonable for him to be able to live in a property chosen with him in mind, with a garden. She had been told that

the chances of getting local authority housing with a garden were non-existent.

27. Asked why she had told G about the delays in the case, the Applicant said he lives with her and, if he asked, she would try to tell him. It would not be helpful not to give him an answer. If the order for possession was delayed, he would have to continue living at home. The situation has gone downhill a lot recently. G is tucking himself away and suffering.

Re-examination of the Applicant

28. The Applicant said at the time of entering into the lease, she thought it was a straightforward process to bring the tenancy to an end if the rules were followed. She had the impression that the Respondent might have intended to move out at some stage to be nearer her daughter. She could not recall the details and matters just drifted on. She did not foresee the tenancy going on forever.
29. Responding to questions from the Tribunal, the Applicant said G wishes to move out. He looks in furniture shops and talks about what he will do in the garden, about cooking and how he will get to church. The Applicant confirmed the Property is a two bedroomed first floor flat with communal and private garden.

Witness – Mr Colin Wilson Blaikie

30. The witness is the Applicant's husband, a retired solicitor and full time carer. He retired in March 2021 because the Applicant was unable to support their sons on her own. They had lost support during lockdown and it had been difficult. He was working long hours and it was not sustainable. He had no choice but to retire.
31. The witness described the difficulties that the sons have. Both are partially sighted and attended the Royal Blind School. They have quite marked learning difficulties and have been in the system since they were four years old. They have no numeracy skills and require guided through life. They have an IQ of 60 and were deemed to have the mental age of 11 when in their teens.
32. The witness said the Property was particularly suitable as it was end terrace and had a garden and two bedrooms. It was in proximity to their own home and it was originally thought one or both sons could move in. This is the only other residential property they own. They partially funded it with an interest free loan, also using money left by the Applicant's aunt to be used for the sons' future benefit. The witness said he could not foresee purchasing any further property. Their capital is tied up in the Property. There is currently a small amount of income from the Property, but that is reducing as interest rates rise. The rent has not been increased since the tenancy started.

33. The witness said the situation at home would improve if G could move into the Property as the sons are constantly fighting and this got worse during lockdown. They are going in different directions and have different interests. The situation at home is stressful and horrible. Sometimes the sons try to manhandle each other, which can be disconcerting due to their size. There was an occasion when one boy threw something at the wall during an argument. The situation is deteriorating on a weekly basis with lots of stress and unhappiness. G is getting more and more anxious over the delays.
34. Responding to questions from the Tribunal, the witness said they have not looked for housing for G elsewhere as they understood it would be a fraught and long process.

Summing up for the Respondent

35. Ms Bon accepted the requisite notices had been served but submitted it would not be reasonable to grant the order and asked the Tribunal to refuse the order. The Respondent is extremely sympathetic to the Applicant's family circumstances, but she has a very sympathetic set of circumstances of her own. Until appropriate arrangements are made and the Respondent is able to move, it would not be reasonable to evict her from her home of eight years. The Applicant and her husband have not looked at other arrangements that might be made for G.
36. The Respondent has outlined her extensive physical and mental problems which have been compounded by bereavement. She has a disability. She has been unable to make any progress until recently due to her health issues. The Respondent is confused about the process. She is not able to make a homeless application while in the tenancy. She has, therefore, had no option but to defend the case to avoid being deemed intentionally homeless in terms of section 26 of the Housing (Scotland) Act 1987.
37. The Respondent is reluctant to seek private rented housing as she is looking for more security of tenure. If she is made homeless, she may be housed in lower quality temporary accommodation than a long term let. It may be a bed and breakfast or a hotel. She may have to move several times. She would find it extremely difficult to cope in these circumstances, and it would be difficult to manage her health problems.
38. The Respondent would be entitled to one reasonable offer of temporary accommodation if she was deemed non-intentionally homeless. It is likely it would then take around 3 years to get permanent housing. This would have an adverse impact on the Respondent's life, with a likely deterioration in her mental and physical health.
39. If the Tribunal was to determine it was reasonable to grant the order, Ms Bon submitted the order should be delayed for a period of three months or such other time as the Tribunal thought reasonable. The Respondent is making

some progress and hopes her health will continue to improve and allow her to make further progress.

40. Responding to questions from the Tribunal regarding the local authority's bidding system, Ms Bon said the Respondent has no priority in terms of homelessness at present. If she was found to be non-intentionally homeless she would get more priority. Anyone can bid on every property and homeless persons are given reasonable preference, and a silver status. It is Ms Bon's understanding that a gold status is for those with mobility issues. It is also her understanding that, in Edinburgh, one would have to bid for 3 years before getting a property. It would be possible to submit evidence on behalf of the Respondent to support her requirement not to be placed in shared accommodation, but in Ms Bon's experience, this is not always successful.

Summing up for the Applicant

41. Ms Donnelly submitted that it was reasonable to grant the order. The Property was purchased in 2013 with the intention to use it as a residence for one or both sons. The Respondent was made aware of this at the outset of the tenancy. At that time, the legislation would have allowed possession to be recovered mandatorily. No one could have foreseen the change in the legislation.

42. With a social work package and visits from his parents, G could settle in the Property. He would have a better quality of life and more independence. This would improve their family life and allow them to focus on the needs of their other son. It would alleviate the family's stress and benefit the family's wellbeing. The Applicant's mental and physical health has been affected by the situation and she does not intend to act as a landlord again. She was unable to continue dealing with landlord issues and had appointed an agent. The Applicant's husband had taken early retirement and the couple do not have the means to purchase another property. The Property had been purchased partially using money left by a relative to benefit the sons. The Tribunal should find both witnesses credible and reliable.

43. Production 8, a letter from the Intellectual Disability Service of the NHS set out the needs of the Applicant's son, and showed that the family was under significant strain at present and that the Property was suitable because it has a garden and is close to the Applicant's home. Production 9, an email from the son's social worker indicated that a support package cannot be put in place until the Property is vacant, so support is on hold. It confirms that the move would be beneficial for all and that delays are causing stress and anxiety. Production 10, a letter from Central Psychology Scotland, shows the difficulties experience with E and the deterioration in the situation, and considerable stress which the family is under. It would help E if G was to move out. Production 11 was from a support worker who indicated the anxiety and upset caused to G due to the delays. Production 12 showed the difficulties the Applicant had experienced in dealing with the tenancy, which

caused additional stress. Production 15, an email from the social worker for E, showed the stress on the family caused by the situation.

44. Referring to the Respondent's evidence, Ms Donnelly said the oral and agreed evidence showed there had been considerable attempts at engagement with agencies, support workers, occupational therapy, the GP and homelessness services. There was nothing to say this support could not continue at another address. It was submitted that it is a matter of judicial knowledge that eviction may be detrimental to anyone's health, however the Respondent has accessed a support network. Her health problem are longstanding, and while the Applicant is sympathetic, the problems are not specifically linked to the housing situation or these proceedings. The Respondent hopes the new medication will improve her symptoms.
45. Despite having assistance, the Respondent only began to bid for properties two weeks ago. She has no ties in the immediate area and could search outwith the area. The Respondent accepted she did not know what temporary accommodation would be like. It is not necessarily the case that it will be shared. There is no evidence of that. The Respondent entered into a short assured tenancy with advice, and she was aware of the nature of the lease and security of tenure. The nature of private letting is such that recovery of possession may be sought. The Applicant is entitled to seek to recover possession. It would be unreasonable for the situation to continue indefinitely especially in the current circumstances. The balance of reasonableness favours G occupying the Property.
46. It is not reasonable to suggest that the Applicant ought to have investigated other properties when the Property was bought using money left for the purpose while the Respondent has delayed for almost a year in finding other accommodation.
47. The Respondent has already had sufficient time and support and the order should not be delayed. She is still failing to engage meaningfully with Thrive. Delaying the order would just prolong and delay her difficulties. In all the circumstances, it is reasonable to grant the order.

Further discussion

48. Ms Bon pointed out that the local authority would not accept a homeless application in the current circumstances, so it was not the position that the Respondent had failed to present as homeless. The Respondent can present as homeless if an order is granted.

Findings in Fact and Law

49.
 - (i) The Property was purchased by the Applicant and registered on the Land Register for Scotland under Title Number MID150836 on 7th January 2014.

- (ii) The Property was purchased with the intention that one or both of the Applicant's twin sons would eventually reside there.
- (iii) The purchase of the Property was partially funded using money left by a relative for the future benefit of the Applicant's sons.
- (iv) Parties entered into a short assured tenancy agreement in respect of the Property that commenced on 27th March 2014 for a period of one year and monthly thereafter.
- (v) Notice to Quit and Section 33 Notice dated 21st January 2021, requiring the Respondent to quit the Property by 28th July 2021 was served on the Respondent by Sheriff Officers on 22nd January 2021.
- (vi) The short assured tenancy has reached its ish date.
- (vii) The contractual tenancy terminated on 22nd January 2021.
- (viii) Tacit relocation is not in operation.
- (ix) The Applicant has given the Respondent notice that she requires possession of the Property.
- (x) The Respondent has considerable mental and physical health issues that have impacted upon her ability to engage with services in a search for alternative accommodation.
- (xi) The Respondent is a disabled person in terms of section 6 of the Equality Act 2010.
- (xii) The Respondent's mental and physical health issues have deteriorated as a result of the Covid-19 pandemic and the death of her parents.
- (xiii) The Respondent has suffered deterioration in her mood, and stress and anxiety in relation to her housing situation and the possibility of eviction.
- (xiv) The Applicant's son, E, has a learning disability and sensory impairment, autism and OCD. He has difficulties in social functioning and his OCD causes him stress and anxiety.
- (xv) The Applicant's son, G, has low vision, intellectual disability, autism and obsessional fixations.
- (xvi) Professionals are agreed that it would be beneficial to the health and wellbeing of G, E and his parents, if G was to live in the Property with support.

- (xvii) Delays in moving G into the Property has caused stress within the Applicant's family and between G and E.
- (xviii) The Applicant has suffered from low mood as a result of family stress caused by the behaviour and demeanour of G and E and their inability to live peacefully in the same house.
- (xix) It would be beneficial for G and for the Applicant's whole family, if G were to live in the Property.
- (xx) It is reasonable to grant the order for possession.

Reasons for Decision

50. The Tribunal found all the witnesses to be credible and reliable.
51. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case.
52. The Tribunal was satisfied that the Applicant wishes to recover possession of the Property so that G can live in the Property. The Tribunal was satisfied from the considerable medical and social work evidence provided, which evidence was agreed, that it would be beneficial for G to live in the Property. The Tribunal was satisfied that it is detrimental to the wellbeing of the Applicant, her husband, G and E for their current living situation to continue as it is. The current situation is causing significant stress to the whole family and has caused a deterioration in the Applicant's mental health.
53. The Tribunal was not persuaded that the Applicant ought to have sought alternative rented accommodation for G. The Tribunal noted that the Property was bought with the intention that one or both of the Applicant's sons would live there when the appropriate time came, using money that had been left for that purpose. The Property was chosen for its location, accommodation and facilities, all of which were deemed desirable if one or both of the sons were to live there when the appropriate time came.
54. The Tribunal was satisfied from the agreed medical and other evidence before it that the Respondent has significant mental and physical health issues that have affected her ability to engage in attempts to secure alternative housing, and that she is a disabled person in terms of section 6 of the Equalities Act 2010. The Tribunal accepted that the uncertainty caused by the prospect of eviction cannot be helpful to the Respondent's health and wellbeing, and that there is a risk of further deterioration if the order is granted.
55. The Tribunal considered the fact that the Respondent has lived at the Property for eight years, which is a considerable period of time. However, the Property was let on a short assured tenancy, with both parties considering it to be a fairly short term arrangement. If it was not for the Covid-19 pandemic

and the ensuing change to the legislation, recovery of possession would have been granted mandatorily, and that was what the Applicant had in mind at the time of entering into the tenancy agreement. The Respondent had housing advice from a friend, and presumably knew the nature of a short assured tenancy.

56. In considering the effect of granting the order upon the Respondent, the Tribunal took into account the fact that the Respondent has been told by the local authority that, if deemed non-intentionally homeless, it is likely to be three years before she will be provided with permanent social housing. The Tribunal took into account the anecdotal evidence provided in relation to temporary accommodation and the possibility that the Respondent may be placed in shared accommodation. The Tribunal considered shared accommodation may not be beneficial to the Respondent and her mental and physical health issues, however, there was no evidence before the Tribunal to indicate the likelihood of shared accommodation being provided as opposed to other types of temporary accommodation, some of which will be individual dwellings. The Tribunal took into account the local authority's obligation to consider the Respondent's circumstances before allocating temporary accommodation.
57. The Tribunal took into account the oral evidence of the Respondent that she was not seeking private rented accommodation because she had been told by her support workers that private rented housing would be short term and she would have to go through this again. There was no compelling evidence before the Tribunal to indicate that private rented housing is not available to, or is unsuitable for, the Respondent.
58. The Tribunal considered what would happen if the order was refused. The Respondent is not seeking private rented accommodation. There was no evidence before the Tribunal to indicate how long it would take for the Respondent to secure social housing if she was not deemed to be homeless. It seemed, therefore, that the situation could drift on indefinitely, during which time, the Applicant's living circumstances, and those of her family, which are already precarious and disturbing, would be likely to deteriorate further.
59. The Tribunal considered that eviction would cause hardship towards the Respondent; however, not granting an order will cause hardship towards the Applicant and her family. Granting the order would mean that G would have a better quality of life and more independence, which would improve the family life and allow the Applicant and her husband to focus on the needs of E. Granting the order will allow the Respondent to present as homeless, and the process of finding temporary accommodation to begin. She has support workers and at least one other agency to assist her through this process, and to help ensure that any temporary accommodation is suitable. She has begun to engage with the available support in seeking alternative housing, which could include private rented housing. There was no compelling evidence before the Tribunal that the Respondent cannot continue to access her support workers and GP from another address.

60. In taking the foregoing factors into account, the Tribunal decided that the balance of reasonableness was weighted towards the Applicant. The Tribunal finds it is reasonable to grant the order.

61. The Tribunal considered the submissions made in regard to delaying execution of the order. The Tribunal considered that a delay of three months would be too long given the situation of the Applicant and her family, and the need to see some progress towards G's independent living. The Tribunal took into account that the Respondent has already had a considerable amount of time in which to seek alternative accommodation, however, she has only recently felt able to engage with her support, and an extra month would be beneficial and fair in the circumstances.

Decision

62. The Tribunal grants the order for possession of the Property in favour of the Applicant. The order cannot be executed before 12 noon on 5th July 2022.

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.

H Forbes

02 May 2022

Legal Member/Chair

Date