



**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/22/2574

Re: Property at 149 Montford Avenue, Glasgow, G44 4NT (“the Property”)

Parties:

Mr Emmanuel Farren, Mrs Bridie Farren, 7 Curtis Ave, Glasgow, G44 4QD (“the Applicants”)

Miss Katrina Dempster, Mr Mark Cummiskey, 149 Montford Avenue, Glasgow, G44 4NT (“the Respondents”)

Tribunal Members:

Valerie Bremner (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a possession order be made for the property in terms of section 33 of the Housing (Scotland) Act 1988 and that is reasonable to grant the order.

1.This application for a possession order in terms of Rule 66 of the Tribunal rules of procedure was first lodged with the Tribunal on 27th July 2022 and accepted by the Tribunal on 28th September 2022.A case management discussion was fixed for 9th December 2022 at 2pm.

2.The Tribunal had sight of the application, a tenancy agreement, a Form AT5 served on the Respondents at the start of the tenancy, two notices in terms of section 33 of the Housing (Scotland) Act 1988 dated 19th May 2022 and addressed to the Respondents requiring vacant possession by 23rd July 2022 , two Notices to Quit the property also dated 19th May 2022 sent to the Respondents, letters to the Respondents accompanying the Notices to Quit and Notices in terms of Section 33 of the Housing (Scotland) Act 1988, prior notice of grounds of recovery of the tenancy given to the Respondents when the tenancy commenced, a postal slip, proof of postal delivery of the Notices to Quit and notices under Section 33, a notice

in terms of section 11 of the Homelessness etc (Scotland) Act 2003 and an email intimating this to Glasgow City Council.

3.The case management discussion was attended by Mrs Bains of Happy Lets who represent the Applicants. Both of the Respondents attended, and the Second Respondent Mr Cummiskey spoke on behalf of both of them.

4.The parties had entered into a short-assured tenancy agreement at the property on 22nd April 2016 until 23rd October 2016 but according to the agreement the tenancy continued on a monthly basis thereafter unless ended by either party.

5.Mrs Bains did not wish to add anything to the paperwork already lodged for the Applicants. The Tribunal legal member asked her why the Applicants were seeking a possession order and she advised that the Applicants required to sell the property for financial and personal reasons.

6.Mrs Bains advised that that the Applicants had first served notice on the Respondents that they were seeking possession of the property over a year ago but had rescinded the notice and had tried to work with the tenants to resolve matters. They had looked out for a suitable property for the Respondents but nothing suitable for their family had come up. Now she said the Applicants really did require to sell the property.

7.Mr Cummiskey spoke on behalf of both Respondents. He said the Respondents were not objecting to a possession order and were working with different housing associations to see what they could get by way of housing and also they were looking at social housing. He understood that they needed to be evicted in order to obtain assistance. This was all a matter of concern for them. He lived at the property with the other Respondent, and they also had 4 children aged between 3 and 16 living with them. One of the children was having some difficulties at school currently and he also indicated that Miss Dempster was sick with worry over the stress of the situation. The property had three bedrooms he said, and the children were having to share bedrooms. It was not suggested by Mr Cummiskey that for the Tribunal to make a possession order would be unreasonable and the Respondents did not challenge the notices lodged or suggest that they did not meet the requirements of the legislation.

8.Mr Cummiskey said that there was no property on offer for the Respondents and their family. They had started the process of registering as homeless and had been told to come back when a possession order had been granted. They were seeking a property in the same area for work, family, and school reasons. He indicated that there was no support on offer to them.

9.Mrs Bains indicated that the property in fact had two bedrooms and a boxroom.The landlords had been accommodating the Respondents for a long time and they had withdrawn the first notices to allow the Respondents to keep searching for property. The landlord was concerned that the property required a good deal of maintenance and the overcrowding at the property was having an impact.

10.The Tribunal legal member raised the issue of whether in the event that a possession order was granted the date of execution of the order, or the date of

possession should be delayed for any period of time. Mrs Bains indicated that she wanted to be reasonable, and the Applicants would not “ see the Respondents on the street” but she had no instructions to agree any form of delay which might mean another 3 to 6 months before the Applicants could gain possession of the property. She was prepared to consider a reasonable amount of time if an order was made before possession was granted. Mr Cummiskey indicated he would agree to anything which might allow him and his family to receive they assistance they needed.

11.Both Tribunal members explained the process if an order was granted and the time that this would involve for issue of the decision, the period for an aggrieved party to seek permission to appeal any decision and timescales for further eviction procedure to be carried out. Both Mrs Bains and the Respondent Mr Cummiskey indicated that they understood the timescales if a possession order was to be granted by the Tribunal.

Findings in Fact

12.The parties entered into a short-assured tenancy on 22nd April 2016 until 23rd October 2016 which continued on a monthly basis thereafter.

13.Notices to Quit and notices under Section 33 of the Housing (Scotland) Act 1988 both dated 19th May 2022 were served on the Respondents requiring them to quit the property by 23rd July 2022.

14.The short-assured tenancy has reached its end.

15.The contractual tenancy came to an end on 23rd July 2022.

16.Tacit relocation is not operating in relation to this tenancy.

17.The Applicants have given notice to the Respondents that they require possession of the property.

18.The Applicants require to sell the property for financial and personal reasons.

19.The Respondents do not oppose the order but are concerned about finding another suitable property to live with their family and having support to find such a property.

20.It is reasonable in all of the circumstances to grant a possession order.

Reasons for Decision

21.The Tribunal was satisfied that the requirements of section 33 of the Housing (Scotland) Act 1988 had been met in terms of notice and that the tenancy had come to an end and that tacit relocation was not in operation. The Applicants had given proper notice to the Respondents that they require possession of the property. The Applicants require to sell the property for financial and personal reasons. The Respondents do not object to an order being granted but are concerned that they

can find another property to accommodate their family in the same area. They have registered as homeless and been advised to go back for assistance when an order is granted. In all of the circumstances it is reasonable to grant the order.

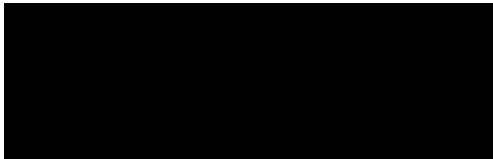
The Tribunal decided not to extend the time for execution of the order given that the Respondents require the order to obtain assistance with housing, and the Applicant's representative indicated that a reasonable approach would be taken to enforcement of the order.

Decision

The Tribunal determined that a possession order be made for the property in terms of section 33 of the Housing (Scotland) Act 1988 and that it is reasonable to grant the order.

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.



Legal Member/Chair

09.12.2022
Date