



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/22/3414

Re: Property at 42 Dunblane Drive, East Kilbride, G74 4EP (“the Property”)

Parties:

Ms Janice Nicolson, Hillside Cottage, Falkirk Road, Avonbridge, FK1 2NA (“the Applicant”)

Miss Kimberley McNeil, 42 Dunblane Drive, East Kilbride, G74 4EP (“the Respondent”)

Tribunal Members:

Andrew Upton (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession of the Property should be granted against the Respondent, with enforcement superseded until 2 June 2023.

FINDINGS IN FACT

1. The Applicant is the landlord, and the Respondent the tenant, of the Property under a short assured tenancy agreement dated 10 July 2017.
2. The property is a two bedroom ground floor flat. One of the bedrooms is a single and the other is a double.
3. The Applicant told the Respondent in or around 2020 that she was hoping to sell the flat.
4. The Respondent has been engaging with South Lanarkshire Council and East Kilbride Housing Association, as well as the Glasgow Housing Association, to identify suitable alternative accommodation since in or around 2020.
5. The Respondent lives in the property with her four year old twin girls and twelve year old son.

6. The Respondent's son is autistic.
7. The Respondent's son attends Larkhall Academy, which has an Additional Support Needs base. He travels to Larkhall Academy from the Property by way of private transport supplied by South Lanarkshire Council.
8. The Respondent's son does not cope well with change.
9. The Respondent's daughters attend a local nursery school, and are due to start at Halfmerke Primary School later this year.
10. The Respondent has been on the homeless application list with South Lanarkshire Council since June 2022.
11. The Respondent has been diagnosed with anxiety.
12. The Respondent has no family in East Kilbride, but does receive some support from the father of her twin daughters, as well as his mother.
13. The Respondent is not in employment at the moment.
14. The Applicant previously had a portfolio of rental properties, but decided in 2017 that she did not want to continue as a landlord in light of proposed changes in regulation of the private rented sector.
15. The Applicant has taken steps to liquidate her property portfolio. The Property is the last property to be sold.
16. There is mortgage lending over the Property.
17. The mortgage payments have tripled in recent months.
18. The Applicant has not increased the rent since the tenancy began.
19. The Applicant is making a loss on the Property of about £100 per month.
20. The Property is not suitable for the Respondent and her family.
21. The Applicant does not want to be a residential landlord anymore.
22. The Applicant entered into a short assured tenancy agreement with the Respondent prior to recovery of a property let on a short assured tenancy became discretionary.
23. The Applicant gave notice to quit

FINDINGS IN FACT AND LAW

1. The tenancy reached its end on 17 July 2022.
2. By notice to quit dated 17 January 2022, the Applicant gave notice to the Respondent that the contractual short assured tenancy would end on 17 July 2022, and thereby prevented tacit relocation from operating.
3. By notice dated 16 January 2022, the Applicant gave notice to the Respondent under section 33(1)(d) of the Housing (Scotland) Act 1988 that she required possession of the Property.
4. In all of the circumstances, it is reasonable to grant an order for possession under section 33 of the Housing (Scotland) Act 1988.

STATEMENT OF REASONS

1. This Application called for its Case Management Discussion by teleconference call on 2 March 2023. The parties were both present.
2. In this Application the Applicant seeks an eviction order under section 33 of the Housing (Scotland) Act 1988. In terms of section 33(1) of the 1988 Act, the Tribunal may grant an order for possession where (i) the tenancy has reached its natural termination date, (ii) tacit relocation is not operating, which

is to say that the contract has not automatically continued, (iii) a notice under section 33(1)(d) is given, stating that the landlord requires possession, and (iv) it is reasonable to make the order for possession.

3. In the Application, the Applicant says that the tenancy agreement between the parties in respect of the Property was a short assured tenancy, that she terminated the contractual tenancy by service of a notice to quit, and that she also gave notice under section 33(1)(d) of her requirement for possession. None of those matters are in dispute. The only question for the Tribunal to determine is whether it is reasonable to grant the eviction order.
4. By email dated 7 February 2023, in advance of the CMD, the Respondent wrote to the Tribunal in fulsome terms to set out her personal circumstances. In terms thereof, she explained that the property is a two bedroom ground floor flat. The Applicant told the Respondent in or around 2020 that she was hoping to sell the flat. Since then, the Respondent has been engaging with South Lanarkshire Council and East Kilbride Housing Association, as well as the Glasgow Housing Association, to identify suitable alternative accommodation. In particular, the Respondent lives in the property with her four year old twin girls and twelve year old son. Her son is autistic. He attends Larkhall Academy, which has an Additional Support Needs base. He travels to Larkhall Academy from the Property by way of private transport supplied by South Lanarkshire Council. He does not cope well with change. The twins attend a local nursery school, and are due to start at Halfmerke Primary School later this year. The Respondent has been on the homeless application list with South Lanarkshire Council since June 2022. She has been diagnosed with anxiety. She has no family in East Kilbride, but does receive some support from the father of the twins as well as his mother. The Respondent is not in employment at the moment. The Respondent expressed gratitude to the Applicant for being as accommodating as she has been.
5. At the CMD, the Applicant did not dispute anything that the Respondent said. The Applicant spoke of a desire to sell the Property. She had previously had a portfolio of rental properties, but decided in 2017 that she did not want to continue as a landlord in light of proposed changes in regulation of the private rented sector. Since then, she has liquidated her portfolio. The Property is the last property to be sold. There is mortgage lending over the Property. The mortgage payments have tripled in recent months. The Applicant has not increased the rent since the tenancy began. She is now making a loss on the Property of about £100 per month. The Applicant expressed the view that the Property was not suitable for the Respondent and her family. It has a single bedroom and a double bedroom. The Applicant described the Property as overcrowded with the Respondent and three children.
6. The Respondent did not disagree with anything that the Applicant said. She reasserted that her priority was to protect her son, in particular, from disruption.

7. In terms of Rule 17(4) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017, the Tribunal may do anything at the CMD that it may do at a Hearing, including make a decision. In terms of rule 2, the Tribunal must have regard to the overriding objective to deal with proceedings justly when making a decision; including the need to avoid unnecessary delay.
8. In light of the discussion at the CMD and the parties' candour, it was apparent to the Tribunal that there was no dispute between the parties regarding the facts in the case. There was therefore no need to fix a Hearing. The Tribunal had the parties' respective positions. The only question to be determined was, having regard to all of the circumstances as described by the parties, is it reasonable to grant the eviction order?
9. In Rennie, *Leases*, at paragraphs 22-26 to 22-30, the author considers what is required to determine whether it is reasonable to grant an eviction order. He stated:-

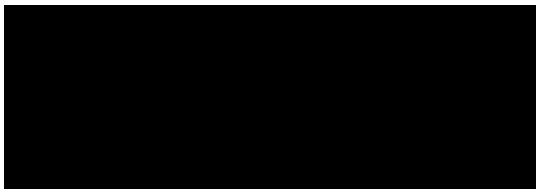
*“The reasonableness requirement is crucial in possession proceedings and in practice many possession cases turn on it. The onus is on the landlord to establish that it is reasonable to make the order... It is clear that the sheriff must consider the question of whether it would be reasonable to award possession as a distinct issue. The sheriff has substantial, but not unlimited, discretion to decide whether it would be reasonable to award possession. In deciding the question of reasonableness, the sheriff must take all relevant matters into account, ignore all irrelevant matters and the decision must be a reasonable decision in the restricted sense of being one which a reasonable sheriff could make... Each case should be considered on its own facts and general merits. What should be taken into account will vary from case to case and will also tend to vary according to the ground of possession relied on... In *Cresswell v Hodgson* the Court of Appeal said that the decision should take into account the interests of the parties and also the interests of the public. That will mean considering the likely consequences and effects of both awarding and refusing possession on both landlord and tenant and also, where appropriate, the general public.”*

10. It goes without saying that all evictions from residential properties cause significant impact on the individuals being evicted. The Tribunal is always mindful of that fact. However, it is also obvious that some persons, by virtue of health conditions, may be negatively impacted to a greater degree than most. The Tribunal considers that the Respondent's son is one such person, and the need to avoid disruption to him is a factor upon which the Tribunal places great weight. In particular, his eviction could result in a period in one or more temporary accommodations, which would increase the level of disruption for him and would cause distress. Beyond that, there is little in the Respondent's circumstances that would tend to suggest that it would be unreasonable to grant the eviction order.

11. Turning to the Applicant, it is true that she is suffering financial loss as a consequence of the disparity between the rental income and the mortgage payments due. However, that is something that could be addressed by raising the rent. The strongest factor in her favour, in the Tribunal's view, is her desire to cease being a residential landlord. Whilst it is true that she can be taken to have entered the rental market in full knowledge of the likely risks associated with being a residential landlord, the market has undoubtedly changed in that time. Regulations have changed. Applications under section 33 of the 1988 Act, which were formerly mandatory if the appropriate notices were given, are now discretionary. It cannot be said that the Applicant entered into this agreement in acceptance that she would be unable to bring it to an end if she wanted to. That is also a significant factor in this matter.
12. Having regard to all of the circumstances of the case, the Tribunal is satisfied that it is reasonable to grant the eviction order. However, the Tribunal also considers that the enforcement of that order should be superseded, which is to say delayed, until 2 June 2023. The reason for that is to maximise the opportunity for the Respondent to find suitable permanent accommodation for herself and her family, in order to minimise the disruption for her son in particular.
13. The Tribunal accordingly granted the order for 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.



Legal Member/Chair

2 March 2023

Date