



**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/22/3507

Re: Property at 60 Balgonie Avenue, Glenrothes, Fife, KY7 5DB (“the Property”)

Parties:

**Mr Christian Gachet, Abbey Farm, Macclesfield Road, Chelford, Cheshire, SK11
9AH (“the Applicant”)**

**Mr Andrew Wyse, 60 Balgonie Avenue, Glenrothes, Fife, KY7 5DB (“the
Respondent”)**

Tribunal Members:

Neil Kinnear (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

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

Background

[1] This was an application dated 22nd September 2022 and brought in terms of Rule 66 (Application for order for possession upon termination of a short assured tenancy) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

[2] The Applicant provided with his application copies of a short assured tenancy agreement, form AT5, notice to quit, section 33 notice, Section 11 notice, and relevant proof of service.

[3] All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

[4] The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 30th November 2022, and the Tribunal was provided with the execution of service.

[5] By letter to the Tribunal dated 13th December 2022, the Respondent advised that he had suffered health difficulties for the previous 12 months which had caused him to fall behind with his rent payments. He advised that he was about to return to work and would then seek to repay his rent arrears.

[6] A Case Management Discussion was held at 10:00 on 25th January 2023 by Tele-Conference. The Applicant did not participate, and was represented by Mr Brown, solicitor. The Respondent participated, and was not represented.

[7] Mr Brown explained that although sympathetic concerning the Respondent's health difficulties, the Respondent had not made any payments towards rent for nearly one year. That deprived the Applicant of any income in respect of the Property in circumstances where he continued to make mortgage payments upon it and to incur other costs. The financial cost was particularly acute as the Applicant had not sought to increase the rent since the lease commenced 13 years ago.

[8] Mr Brown advised that the Applicant intended to sell the Property, and that it would be much more difficult to realise an economic sale price if sold with a sitting tenant. The Applicant rented out other properties, but property rental was not his main employment.

[9] For these reasons, the Applicant invited the Tribunal to grant the order sought.

[10] The Respondent accepted that he had incurred rent arrears, but explained that this was due to his loss of income as a result of his recent health difficulties. He was about to return to work full-time, and wished to repay his arrears over the next few months. He had never accumulated rent arrears before in relation to the Property. He would suffer hardship if the order was granted.

[11] After a short adjournment for discussion by the Tribunal members, the Tribunal reconvened. The only issue between the parties was as to the reasonableness or otherwise of the Tribunal granting the order sought. That is a question left to the discretion of the Tribunal, which the Tribunal would require to hear evidence upon in order for it to resolve.

[12] In particular, the Tribunal would need to hear from the Applicant regarding his circumstances and reasons for wishing to end the tenancy and sell the Property, and the consequences for him if the Tribunal did not grant the order sought. The Tribunal would also need to hear from the Respondent in more detail regarding the reasons for his accumulating rent arrears, his proposals and ability to repay those, and the impact upon him if the Tribunal granted the order sought.

[13] For those reasons the Tribunal set a Hearing, and advised the parties about the procedures involved in that. The parties and the Tribunal agreed that a face to face in

person hearing should take place, but that the Applicant participate in that by way of video-link. The Tribunal also issued a direction to both parties indicating information that each should lodge in advance of the hearing.

[14] The Tribunal noted that the Respondent might wish to seek advice on his housing situation and eligibility for any benefits (for example Universal Credit Housing Payment or Discretionary Housing Payment, etc.) which might be available to contribute to the rent arrears accrued during his period of ill health, and directed the Respondent to a list of organisations that can provide such advice on the Tribunal website.

Hearing

[15] A Hearing was held at 10:00 on 19th July 2023 at George House, George Street, Edinburgh. The Applicant participated by Video-link, and was represented by Mr Nicolson, solicitor. The Respondent participated, and was not represented.

[16] The Tribunal heard evidence from the Applicant and from the Respondent. That was in relatively short compass, and concerned only the question of the reasonableness of granting the order sought.

Findings in fact

[17] Evidence was led by both parties, all of which was uncontested and accepted by both parties. After hearing that evidence, the Tribunal found in fact:

- 1) That the Respondent and his wife rented the Property from the Applicant from 10th September 2010 at a monthly rent of £400.00.
- 2) That the Respondent's wife passed away, after which the Respondent continued to lease the Property from the Applicant.
- 3) That the Respondent ceased paying rent to the Applicant with effect from January 2022. Until that time the Respondent had paid his rent by standing order without any issues.
- 4) That the Respondent advised the Applicant that he had suffered health problems and was off work. As a result of his loss of earnings, he was unable to pay the rent.
- 5) That thereafter, the Respondent on a number of occasions advised the Applicant that money was forthcoming and that he would resume making payments towards the rent.
- 6) That the Respondent has not paid any rent over a period of 18 months, and has accumulated rent arrears in that period of £7,200.00.
- 7) That the Respondent ultimately returned to work in April 2023 and anticipated that his earnings would resume at their previous level.
- 8) That the Respondent collapsed after four shifts at work and was carried off site as a result of further health problems, and will likely be assessed as unfit for work.
- 9) That the Respondent intends to apply for Adult Disability Allowance upon the basis that he is now unfit for work and is likely to remain so.

- 10) That the Respondent currently has a total monthly income of approximately £470.00, comprised of statutory sick pay of £227.00 and Universal Credit of £243.00 per month.
- 11) That the Respondent has a buy-to-let interest-only variable rate mortgage with Birmingham Midshires. He currently pays £407.94 per month in interest payment on that, which sum is greater than the monthly rent for the Property of £400.00.
- 12) That the Applicant originally paid about £200.00 per month in interest charges on the mortgage, but as a result of the increase in interest rates pays £407.94 resulting in a monthly loss on the Property if the current rental was paid.
- 13) That the Applicant previously separated from his wife, which resulted in significant financial cost to him. His business is the let of the Property and 5 other properties located in England. That business is now struggling financially.
- 14) That the Applicant is now wanting to sell all of his rental properties as well as his home. He is 59 years old and wishes to plan for his retirement.
- 15) That if the Applicant is not permitted to sell the Property, he risks defaulting on his mortgage over the Property with consequent effects on his credit rating.
- 16) That if the Property is sold without vacant possession, it will substantially reduce the Property's sale value.
- 17) That the Applicant on sale will require to repay £58,243.15 capital on the mortgage, and expects that with vacant possession the Property might sell for approximately £80,000 to £90,000.
- 18) That the Respondent is seeking assistance from the local authority in obtaining alternative accommodation.
- 19) That the Applicant had complied with all the legal requirements in respect of section 33 of the *Housing (Scotland) Act 1988* and associated legislation.

Submissions

[18] Mr Nicholson submitted that was reasonable in all the circumstances for the Tribunal to grant the order sought.

[19] The Respondent submitted that it was not reasonable in all the circumstances for the Tribunal to grant the order sought.

Statement of Reasons

[20] In terms of Section 33 of the *Housing (Scotland) Act 1988* as amended, the Tribunal may make an order for possession of the house let on the tenancy if:

- (1) the short assured tenancy has reached its end;
- (2) tacit relocation is not operating;
- (3) the landlord has given to the tenant notice stating that he requires possession of the house; and
- (4) it is reasonable to make an order for possession.

[21] All of the above criteria had been satisfied in this application, and the only question for the Tribunal to decide was whether in all the circumstances it was reasonable to make an order for possession.

[22] The Tribunal accepted both parties as entirely credible and reliable. The Applicant was notably sympathetic to the Respondent's difficulties, and the Respondent was notably sympathetic and understanding of the difficulties the Applicant faced as a result of the continuing rent arrears.

[23] The Tribunal would note that it, and the Applicant, accepted that the Respondent's intention to return to work was genuine, and that it was only as a result of his health unexpectedly deteriorating further that he was unable to fulfil his intention to repay his rent arrears.

[24] Nonetheless, it is quite clear that unless and until he successfully obtains payment of significantly increased benefits, the Respondent is in no financial position to pay the rent on the Property.

[25] Even in the event that the Respondent resumed payment of the rent in full, the Applicant as a result of the increase in interest rates would still sustain a monthly loss on the Property as the rent paid is now insufficient to even cover the cost of his buy-to-let mortgage on the Property. It is quite clear that the Applicant is now suffering severe financial hardship, and that his business will likely default on its financial commitments if the order sought is not granted.

[26] The Applicant wishes to realise the value of the Property, along with his other let properties and his own home in order to plan for his retirement. That appeared to the Tribunal to be reasonable in all the circumstances.

[27] The Tribunal would note that it has grave doubt that the Respondent is receiving the various benefits to which the Tribunal would expect he is entitled, and would respectfully suggest that he obtain assistance to ensure that he claims the appropriate benefits which might be available to him.

[28] The Tribunal would note that the relevant legislation is entirely silent concerning what factors it should consider in assessing whether it is reasonable to grant an order for possession, and it is not aware of any decisions of the Upper Tribunal as yet providing guidance on this issue.

[29] In the absence of any such guidance, it appeared to the Tribunal that it required to consider all of the circumstances including the potential effects of granting or refusing the order sought on the parties, and carrying out a balancing exercise in reaching its decision.

[30] In all the circumstances, the Tribunal was persuaded having regard to the competing interests and circumstances of the parties, that it was reasonable for the Tribunal to issue an order for possession.

Decision

[31] In these circumstances, the Tribunal made an order for possession of the house let on the tenancy as sought in this application.

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.

N Kinnear

Legal Member/Chair

19 July 2023
Date