



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/22/4158

Re: Property at Flat 1/1, 3 Eltrick Place, Glasgow, G43 1UA (“the Property”)

Parties:

Mr Lewis Andrews, Park House, 974 Pollokshaws Road, Glasgow, G41 2HA (“the Applicant”)

Ms Julie Robertson, Flat 1/1, 3 Eltrick Place, Glasgow, G43 1UA (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order against the Respondent in favour of the Applicant and suspend the period for enforcement until 30 April 2023

Background

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under section 33 of the Housing (Scotland) Act 1988. In support of the application the Applicant provided the following documentation:-
 - (i) Short Assured Tenancy Agreement between the parties dated 1 April 2014;
 - (ii) Form AT5 dated 31 March 2014 together with signed acknowledgement from the Respondent;

- (iii) Notice to Quit dated 19 August 2022 together with proof of service by Sheriff Officers;
 - (iv) Notice under section 33 of the Housing (Scotland) Act 1988 dated 19 August 2022 with proof of service by Sheriff Officers;
 - (v) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Glasgow City Council with proof of service by recorded delivery;
 - (vi) Photographs of the property; and
 - (vii) Copy referral by the Applicant to adult social work services at Glasgow City Council.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was assigned for the 28th February 2023 to take place by teleconference due to the restrictions imposed by the Covid-19 pandemic. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondents by Sheriff Officers.

Case Management Discussion

- 3 The Case Management Discussion took place by teleconference on 23 February 2023. The Applicant was present and represented by Ms Janice Bell. The Respondent was also present.
- 4 The Tribunal explained the purpose of the Case Management Discussion together with the legal test and asked the parties to address it on their respective positions.
- 5 Ms Bell advised that the Respondent had been a tenant of the property for some time. The tenancy had been inherited by the Applicant when he purchased the property. There had been a number of inspections and the condition of the property had gradually deteriorated. Ms Bell referred to the photographs that had been lodged with the application. Ms Bell acknowledged that the Respondent suffered from some mental health issues and confirmed that she had attempted to assist the Respondent in getting some help for this. However the situation continued to escalate and the property was now uninhabitable. It was a fire and health hazard, endangering not only the Respondent but other residents in the block. Ms Bell explained that the Applicant had tried to get electrical safety checks done but the contractors could not gain access due to the amount of items in the property. The property also required repair works however these were not possible for the same

reason. If the property was cleared the Applicant would be happy to get the works done but that was simply not materialising. It had come to this point whereby the Applicant had served the notices to terminate the tenancy as a last resort. In response to questions from the Tribunal Ms Bell confirmed that the property had electric heating, there was no gas connection. She had last managed to get into the property last year and had taken the photographs produced with the Respondent's consent. Ms Bell confirmed that she was sympathetic to the Respondent's position. She had always paid her rent on time and had been a good tenant. It was unfortunate that it had come to this point.

- 6 The Respondent then addressed the Tribunal. She agreed that Ms Bell had summarised the background to the application accurately. The Respondent advised that she had moved into the property in March 2002. Around 15 years ago she began suffering from depression and anxiety. It led to her having issues with the condition of the property. As much as she had been happy in the property it did need upgrading. She cited some issues such as no hot water in the bathroom sink and broken tiles. She confirmed that there was one wall mounted heater in the lounge but this was never plugged in. The Respondent advised that the previous owner hadn't done any repairs and had then sold the property. The Respondent acknowledged that she had been in the property for 21 years and it was probably time to move on. She had applied to nine housing associations however the lists were long. She had also spoken with the Council. She had been advised by both that she would require an order from the Tribunal in order to go through the homelessness route and improve her prospects. The Respondent confirmed that she had a doctor for her mental health issues. She had attempted to access adult social work services but due to issues with communication had been unable to seek support via that route. She confirmed that she did not oppose the application and had sought advice regarding her situation. She just wanted some more time to move out of the property, it was just a matter of time.

Relevant Legislation

- 7 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Housing (Scotland) Act 1988, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

33 *Recovery of possession on termination of a short assured tenancy.*

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied—

(a) that the short assured tenancy has reached its finish;

b) that tacit relocation is not operating; and

(c)

(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and

(e) that it is reasonable to make an order for possession.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than six months, that period;

(ii) in any other case, six months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that time shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.

8 The Cost of Living (Tenant Protection) (Scotland) Act 2022 is also relevant to this application, it having been received by the Tribunal on 17 November 2022.

Findings in Fact and Law

8 The Applicant entered into a Short Assured Tenancy Agreement with the Respondents which commenced on 1 April 2014 for a period until 1 October 2014 and monthly thereafter.

9 The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.

10 On 22 August 2022 the Applicant delivered a Notice under section 33 of the Housing (Scotland) Act stating that the Applicant required the property back by 1 November 2022 and a Notice to Quit to the Respondent which sought to terminate the tenancy as at that date. The Notice to Quit was in the prescribed form. The Notices were served by Sheriff Officers.

11 The Notice to Quit terminates the tenancy as at 1 November 2022 which is a valid date.

12 The Respondent has allowed the condition of the property to deteriorate. The property is full of various items which are preventing the Applicant from carrying out necessary works.

- 13 The Respondent suffers from depression and anxiety.
- 14 The Applicant has attempted to assist the Respondent in obtaining support for her mental health issues.
- 15 The Respondent has applied to housing associations for alternative accommodation.
- 16 The Respondent has taken advice from Glasgow City Council regarding her housing situation.
- 17 The Applicant and the Respondent have maintained a good relationship.
- 18 The Respondent wishes to move on from the property.
- 19 It is reasonable to make the order sought by the Applicant.
- 20 The provisions of section 33 of the Housing (Scotland) Act 1988 have been met.

Reasons for Decision

- 21 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved.
- 22 The Tribunal was satisfied that the Respondent had been served with a valid Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988. The issue for the Tribunal to determine therefore was whether it was reasonable in all the circumstances to grant an eviction order.
- 23 The Tribunal noted the cordial relationship shared by the parties, both of whom appeared to be accepting of the tenancy coming to an end. The Tribunal also had cognisance of the fact that the Respondent had sought alternative accommodation with the Council and local housing associations and had been advised that the granting of the order would improve her prospects in that regard. Whilst an offer of housing was yet to be forthcoming, the application of the Cost of Living (Tenant Protection) (Scotland) Act 2022 would give the Respondent sufficient time to obtain a new tenancy. She had stated that she wished to move on and that she was not opposing the

application, having sought advice regarding her situation. Accordingly, whilst the Tribunal had some concerns regarding the Respondent's vulnerability, she was clear in her statements at the Case Management Discussion. On that basis the Tribunal was satisfied having regard to the particular circumstances of this case that it would be reasonable to make an eviction order.

24 As noted above, this is an application to which the Cost of Living (Tenant Protection) (Scotland) Act 2022 would apply. In light of the changes proposed to that legislation the Tribunal would encourage parties to seek advice regarding the impact of the provisions on the order granted by the Tribunal.

25 The decision of the Tribunal was unanimous.

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.

Ruth O'Hare

28 February 2023

Legal Member/Chair

Date