



**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/22/4274

**Re: Property at 70 Dougalston Gardens South, Milngavie, Glasgow, G62 6HT
("the Property")**

Parties:

Mr Alister Flett, 20-10 O'Hara Cho, Ashiya Shi, Hyogo, Japan ("the Applicant")

**Ms Lucinda Johnston, 70 Dougalston Gardens South, Milngavie, Glasgow, G62
6HT ("the Respondent")**

Tribunal Members:

Neil Kinnear (Legal Member) and David Wilson (Ordinary Member)

Decision

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

Background

[1] This was an application dated 29th November 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 15th November 2023, and the Tribunal was provided with the execution of service.

[5] A Case Management Discussion was held at 14:00 on 21st March 2023 by Tele-Conference. The Applicant did not participate, but was represented by Miss Bain, solicitor. The Respondent participated, and was represented by Mr Heath, of East Dunbartonshire Citizens Advice Bureau.

[6] Mr Heath confirmed that the Respondent took no issue with the legal procedures followed by the Applicant. He accepted that all the paperwork had been correctly prepared. However, the Respondent's position was that it was not reasonable for the Tribunal to grant the order sought due to her circumstances.

[7] The Respondent is a carer for both her own 11 year old daughter, and also for her elderly father, both of whom suffer health difficulties. She receives attendance allowance, and frequently requires to stay at her parents' house which is located very close to the Property.

[8] If the Respondent was required to leave the Property, she would require to find alternative accommodation provided by the local authority. Due to a shortage in the immediate vicinity of the Property, that might involve her moving to Kirkintilloch, which is some distance away and would involve a journey involving two different buses to attend to her father. The Respondent would suffer hardship if the order was granted.

[9] Miss Bain confirmed that she and the Applicant were unaware of these personal circumstances of the Respondent. She also confirmed that the Respondent paid her rent and had caused no difficulties during the tenancy.

[10] Miss Bain explained that this was the only Property which the Applicant rented out. He now resided in Japan, and was likely to remain there. For that reason, he wished to sell the Property and leave the rental market. In those circumstances the Applicant wished the Tribunal to grant the order sought.

[11] 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 her circumstances and the impact upon her and her family 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 conference-call.

Hearing

[14] A Hearing was held at 10:00 on 4th September 2023 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant participated by conference-call, and was represented by Miss Bain, solicitor. The Respondent participated, and represented by Mr Heath, of East Dunbartonshire Citizens Advice Bureau.

[15] 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

[16] 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 Applicant bought the Property in 1995. He lived there for about three years before moving out. He returned to live there in 2001, and again left in 2004. Since then he has lived and worked abroad. He retained the Property and rented it out in case in future he decided to return to live in Scotland.
- 2) That the Property is the only property which the Applicant owns in the United Kingdom. He has a family home in Dubai, and an apartment in Kobe provided by his employer for his work which is predominately based in Japan.
- 3) That the Respondent rented the Property from the Applicant in terms of a short assured tenancy agreement commencing 1st November 2012, and has continued as tenant from that date. The rental is paid from housing benefit, and the Applicant has never sought to increase the rent charged.
- 4) That the Respondent has been a good tenant and there have been no significant issues between the parties during the course of the tenancy.
- 5) That the Applicant's son is now attending University in England. The Applicant pays for his University fees, and for his accommodation charges and living expenses.
- 6) That the Applicant's daughter wishes to commence University studying architecture in the United Kingdom commencing in autumn 2024. The Applicant intends to pay for her University fees, and for her accommodation charges and living expenses.
- 7) That in order to be able to afford to pay for both his children's University fees, accommodation charges and living expenses, the Applicant requires to sell the Property to provide sufficient funds to do so. If the Tribunal refused the order sought, he would be unable to realise the Property's value and would find it extremely difficult financially to afford to pay for his daughter's intended University education.

- 8) That the Respondent is a single parent to her 11 year old daughter, who suffers from a medical condition. She has just started at secondary school, and if she required to change school that would be particularly disruptive for her.
- 9) That the Respondent receives carer's allowance in respect of her 92 year old father who lives in a house just along the street from the Property with the Respondent's 84 year old mother. The Respondent's father suffers from a deteriorating degenerative condition, and the Respondent provides much of his care, including overnight stays approximately once per week. The Respondent's mother also suffers from a health condition which makes it difficult for her to provide care to her husband without the assistance of the Respondent.
- 10) That the Respondent works as a supply teacher. Due to her caring commitments, she is only able to work approximately two days per week.
- 11) That if the Tribunal granted the order sought, the Respondent and her daughter would require to seek alternative accommodation. There is currently no accommodation available in Milngavie, but there is in Kirkintilloch. If the Respondent required to move to Kirkintilloch, she would be unable to continue caring for her father as she will not have access to a car, and her daughter might require to change school. Such a move would have a detrimental effect on both her father and her daughter.
- 12) That if given approximately six months before any order granted is enforced, Mr Heath hoped that the local authority might be persuaded to provide accommodation in the Milngavie area.
- 13) That the Applicant was sympathetic to the Respondent's position and circumstances, and would be content for the enforcement of any order granted to be delayed until at latest April 2024, which would allow him sufficient time to market and sell the Property prior to his daughter commencing her University education.
- 14) 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

[17] Miss Bain submitted that it was reasonable in all the circumstances for the Tribunal to grant the order sought. She referred the Tribunal to the various vouching of University fees and accommodation costs provided by the Applicant in that regard.

[18] Mr Heath's primary submission was that it was not reasonable in all the circumstances for the Tribunal to grant the order sought standing the Respondent's personal circumstances. He conceded, however, that the Applicant owned the Property and should in principle have the right to sell it, and did have good reasons for seeking to do so. His secondary submission was that if the Tribunal granted the order sought, then it should order a delay of at least six months before its execution.

Statement of Reasons

[19] 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.

[20] 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.

[21] 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 if the Tribunal refused the order sought.

[22] The Applicant wishes to realise the value of the Property, in order to pay for his children's university education and expenses. That appeared to the Tribunal to be reasonable in all the circumstances, albeit that would have unfortunate consequences for the Respondent due to her and her family's personal circumstances.

[23] Unfortunate though the situation is, the Tribunal concluded that it would not be reasonable to effectively prohibit the Applicant from realising the value of his own property in order to provide for his children's education, and to therefore prioritise the Respondent's family's well-being over that of the Applicant's family. That is particularly so in circumstances where when the parties entered into the tenancy agreement, the Applicant did so on the basis that he had an absolute right to bring the tenancy to an end providing that he followed the appropriate procedures.

[24] 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.

[25] 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 to carry out a balancing exercise in reaching its decision.

[26] 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, but albeit that the Provisions of the *Cost of Living (Tenant Protection)(Scotland) Act 2022* applied to this application, ordered a delay in execution of that order until 30th April 2024 in terms of Rule 16A(d) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

[27] The Tribunal expressed the hope that the Respondent's local authority might be sympathetic to the Respondent's situation, and might prioritise her for housing in the Milngavie area standing the health issues of her immediate family and the detrimental effects that her relocating away from that area might have on them.

Decision

[28] In these circumstances, the Tribunal made an order for possession of the house let on the tenancy as sought in this application but ordered a delay in execution of that order until 30th April 2024.

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.



4th September 2023

Legal Member/Chair

Date