



**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/23/0869

Re: Property at 30 Broomley Crescent, Alexandria, G83 0HN (“the Property”)

Parties:

Mrs Rubina Khan, 30 Torrinch Drive, Balloch, G83 8JL (“the Applicant”)

**Mr Joseph Corrigan, Mrs Sarah Corrigan, 30 Broomley Crescent, Alexandria,
G83 0HN (“the Respondents”)**

Tribunal Members:

Rory Cowan (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it was reasonable to issue a possession order relative to the Property.

- Background

The Applicant seeks an Order for Possession relative to the Property under section 33 of the Housing (Scotland) Act 1988 (the 1988 Act).

Along with the Application, the Applicant had lodged:

- 1) The copy lease;
- 2) Form AT5;
- 3) Notice to quit;
- 4) Section 33 notice; and
- 5) Recorded delivery receipt and proof of delivery.

- The Case Management Discussion

The case called for a Case Management Discussion (CMD) heard by way of conference call on 14 June 2023. The Applicant appeared and represented herself. The Respondents also appeared, and it was agreed that the first named Respondent would speak for the Respondents. No written response was lodged prior to the CMD by the Respondents. In advance of the CMD, the Applicant had sent an email dated 27 May 2023 setting out her circumstances and the reasons why she was seeking possession of the Property.

The basis of the application for a possession order was explained to the Respondents. They indicated that they did not dispute that the underlying tenancy was a short-assured tenancy. They also indicated that they took no issue with the notices served by the Applicant and were content that the Applicant had complied with the requirements of section 33 of the Housing (Scotland) Act 1988. However, the Respondents indicated a wish to oppose the application.

Notwithstanding her email of 27 May 2023, the Applicant was asked for her reasons for seeking possession. She confirmed that she was seeking possession of the property to house her daughter. She explained that she 47 years old and suffering from severe health conditions including critical degenerative medical conditions. She also indicated that she wished her to move closer to her home so that she could care for her. She also indicated that she was having to support her daughter financially in term sof helping her pay rent and other living costs. She indicated that over the last 2 months she has supported her to the sum of £2,000. She indicated that she cannot afford to continue doing so and that having her move to the Property would reduce the amount of financial support as well as reduce her travelling to care for her daughter. In terms of the medical conditions, the Applicant explained that her daughter had survived cancer but now suffered from various additional conditions being fibromyalgia, what she described as "HS" (Hidradenitis Suppurativa) which caused her daughter to be "plagued by abscesses" as well as being "borderline Multiple sclerosis (MS)". She also indicated that her daughter suffered "mental health conditions", which she indicated she would prefer not to disclose at the CMD. The Applicant indicated that moving her daughter to the Property would "take the financial pressure off her" (the Applicant) and remove the "financial pressure" on her daughter. It was disclosed that the Applicant's daughter could work from time to time when her health allowed, but that she would suffer "flare ups" and be unable to work and be bedridden. Under questioning by the Ordinary member of the Tribunal, the Applicant confirmed that there had been delays in getting a diagnosis for her daughter and although she had applied for disability living allowance, this application had not yet been processed. The Applicant indicated that her daughter's condition had "worsened over the last 18 to 24 months" and that the financial stress on her daughter exacerbated both her physical health problems but also her mental health issues. She indicated that the Respondents had notice of her desire to recover the property since November 2022 (when the notices were served on them) and whilst she had sympathy for them, her own circumstances were such she needed the property back. She also confirmed there was no issue of rent arrears.

The Respondents were then asked their position in relation to what had been outlined by the Applicant. They indicated that they did not take issue or wish to

dispute any of the circumstances outlined by the Applicant in terms of her and her daughter's circumstances and health. That being the case, the Tribunal being satisfied that the requirements of section 33 had been complied with, the only issue was whether or not it was reasonable to grant an order for possession in the circumstances.

The first named Respondent outlined their circumstances. He is 46 years old and his wife is 45 years old. They live at the Property with their 2 children aged 9 and 11 years. They have lived in the property since February 2017. Their children both go to school locally and have a "10 minute walk" to school. Both Respondents are in employment. The primary reason for opposing the application is that it was claimed that the Respondents "had nowhere to go". They indicated that they had looked at private lets locally but there had been none available within their price range. He indicated that they had spoken to housing associations to be put on their lists as well as speaking to the Homelessness team at the relevant local authority. He indicated that neither Respondent or their children had any health issues but that, if they were to be evicted, they would suffer stress and anxiety and that this would affect their "mental and physical health" by being made homeless and being "on the street". To his credit, the first named Respondent expressed sympathy for the Applicant's position and her daughter and indicated that the second named Respondent was a nurse, so understood. He indicated that, notwithstanding, he had to look after the interests of his own family. It was explained to the Respondents by the Ordinary Member of the Tribunal that the local authority had a statutory duty to prevent homelessness and the Respondents indicate that they were aware of that. The Respondents also indicated that they had no timescales as to when they may be offered alternative social housing. It was also explained that, any order for possession (should one be granted) would be subject to the current eviction moratorium under the Cost of Living (Tenant Protection)(Scotland) Act 2022.

- Findings in Fact

- 1) The Applicant and the Respondents entered into a tenancy agreement in respect of the Property.
- 2) The tenancy was a short-assured tenancy with an initial *ish* on 1 September 2017.
- 3) The tenancy thereafter continued monthly with *ish* dates on the first day of each month thereafter.
- 4) The Applicant served Notice to Quit and notice in terms of Section 33 of the Housing (Scotland) Act 1988 dated 31 October 2022 indicating that the Applicant required possession of the property on or before 1 February 2023.
- 5) That on 1 February 2023 the short-assured tenancy reached its *ish*.
- 6) That tacit relocation is not operating.
- 7) That no further contractual tenancy is in operation.
- 8) That the required notice under s33(1)(d) has been given.
- 9) That the Applicant has therefore complied with the requirements of section 33.
- 10) That the Applicant wishes possession of the Property for her daughter to allow her to live closer to the Applicant and for ease of delivering care to her daughter.
- 11) That her daughter suffers from a number of debilitating health conditions and requires care.

- 12) That the Applicant delivers care to her daughter.
- 13) That the Applicant is under financial pressure as a result of supporting her daughter financially.
- 14) That the financial support has totalled £2,000 over the last two months.

- Reasons for Decision

The requirements of section 33 had been met by the Applicant, which was not in dispute. The underlying tenancy was also a short-assured tenancy. Again, something that was not in dispute. To the credit of all parties, they expressed sympathy for each other's position, but understandably we are prioritising their own family's interests. No dispute was raised by either party as to any of the circumstances put before the Tribunal and, as such, there was no basis for an evidential hearing. As the requirements of section 33 of the 1988 Act had been complied with (which was a matter of admission) and the underlying tenancy was a short-assured tenancy (again a matter of admission), the issue for the Tribunal was to determine the question of whether it was reasonable to grant the order sought. Having heard from the Applicant and the Respondents, and having considered the relevant circumstances before them, the Tribunal was satisfied that it was reasonable to grant a Possession Order. Cases like this are difficult decisions for a Tribunal to make and require balancing the parties' respective circumstances and positions to determine the reasonableness or otherwise of granting the order. Clearly the Respondents have resided in the Property for more than 6 years. They live at the Property with their young children who are schooled nearby. It is therefore likely that they have put down roots locally and understandably wish to remain in that locality and to be removed from the Property would inevitably be distressing for them and their family. The Respondents indicated that they have, so far, been unable to find an alternative suitable property to rent privately and it was noted by the Applicant that rents in the locality had risen since the Respondents' tenancy was entered into. Whilst the Tribunal acknowledged the Respondents' circumstances, the circumstances of the Applicant weighed more heavily when making this decision. What weighed particularly in favour of granting the order was the medical condition of the Applicant's daughter and her understandable desire to care for her and have her live close to the Applicant to allow her to deliver care more easily. Further, it was noted that the Applicant was suffering financially in supporting her daughter to live elsewhere and that financial pressure would be eased for both her (and her daughter) if her daughter moved to the Property. Ultimately, the Property belongs to the Applicant, and she is entitled to use it as she wishes (subject to following due process) and should not be forced to continue letting to Property to her own financial detriment. Beyond that, and a factor (albeit of lesser significance) that also weighed in favour of an order being granted is, the Respondents have had notice of the Applicant's intentions since early November 2022 and with the application of the 2022 Act, the possession order will be subject to the current moratorium on evictions, giving them at least 6 months from the date of this order to secure alternative accommodation.

- Decision

The Tribunal resolved to grant an Order for Possession on the basis it was reasonable to do so.

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

Date: 14th of June 2023