



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/22/2661

Re: Property at 2 Mosesfield Street, Springburn, Glasgow, G21 3AB (“the Property”)

Parties:

Mrs Jacqueline Maria Colyer, 100 Milton Road, Sutton, Courtenay, Abingdon, OX14 4BT (“the Applicant”)

Mr Mutende Mwafulirwa, Mrs Angeline Mwafulirwa, 2 Mosesfield Street, Springburn, Glasgow, G21 3AB (“the Respondent”)

Tribunal Members:

Anne Mathie (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for a repossession order in respect of the Property be refused.

Background

Background

1. An application was made dated 2 August 2022 in terms of Rule 66 of the Chamber Rules for an order for possession on termination of tenancy in terms of section 33 of the Housing (Scotland) Act 1988. Along with the application form, the Applicant’s representative lodged the following documents:
 - Copy short assured tenancy agreement
 - Copy notices to quit and section 33 notice – Mr Mutende Mwafulirwa
 - Copy notices to quit and section 33 notice – Mrs Angeline Mwafulirwa
 - “signed for” slips and “track and trace” reports

- Copy Section 11 notice
 - Copy email to Local Authority attaching section 11 notice
 - Photograph of kitchen ceiling
2. The application was accepted and assigned to a case management discussion on 18 November 2022. At the case management discussion it was apparent that there was a dispute between the parties on evidence and a full hearing was assigned for 10 February 2023.
 3. Written representations were submitted by the second Respondent's representative but these had not been viewed by the Tribunal prior to the case management discussion due to being lodged late. The Tribunal had sight of these representations after the case management discussion.
 4. The Tribunal noted at the time of the case management discussion that the following issues were in contention:
 - the nature of the damage to the kitchen ceiling which caused it to collapse and whether this was caused to any extent by the fault of the Respondents or their family;
 - the cause of the following defects and whether they were reported correctly to the letting agents on behalf of the applicant:
 - broken window pane
 - broken garden gate
 - ingress of water on study ceiling
 - broken stair banister
 - water damage to bath panel
 5. The Tribunal issued a Notice of Direction after the case management discussion directing parties to lodge a list of witnesses and a number of documents in process prior to the full hearing taking place.
 6. The parties complied with the terms of the Notice of Direction.

The Hearing

7. The hearing took place by teleconference on 10 February 2023. Mr Calvin Gordon of Thorntons Solicitors attended on behalf of the Applicant and Mr Derek Mahood of the Legal Services Agency appeared on behalf of the Second Respondent. The Applicant attended along with her husband, Clark Coyler, and both the Respondents attended. Rachel Scott of the Legal Services Agency attended as an observer.
8. At the outset Mr Mahood confirmed there was no dispute re the validity or service of the Notices to Quit or section 33 notices, the first Respondent confirmed that his position was broadly the same as the second Respondent's position. Mr Gordon had no objection to the lodging of productions on behalf of the second Respondent although late.

Applicant's Evidence

9. The Applicant confirmed that her position is that the Respondents had not looked after the Property and she would like it back. She felt it had just been one thing after another. She made reference to the relevant clauses of the Short Assured Tenancy Agreement which contained the tenants' duties surrounding taking care of the Property and reporting damage timeously in particular, Clauses 2.4, 2.38 and 2.22.
10. She confirmed that a new bathroom had been fitted in the Property in the summer of 2016 prior to the Respondents moving in. She confirmed that the Inventory lodged was a true reflection of the state of the Property describing the bathroom as clean and tidy along with the kitchen.
11. The Applicant recalled an incident with the kitchen ceiling where part of the kitchen ceiling had fallen down. She received a call from her letting agents who advised that they were sending an emergency plumber out. The Applicant's husband, Clark Coyler, had attended the Property with the emergency plumber.
12. The Applicant's recollection was no leak could be found. Neither the plumber nor her husband could identify a leak.
13. The Applicant contacted her insurance company who said they would send a surveyor to the Property. Reference was made to production 12 for the Applicant and an email dated 25 April 2022 whereby an invoice had been sent to the Respondents by the Applicant's letting agents requesting payment of an invoice in the sum of £816.20 in respect of repairs carried out to the bathroom. The Applicant recalling instructing her letting agents to send this invoice to the Respondents and confirmed that no payment had been made.
14. The Applicant made reference to a letter from her letting agents to the Respondents dated 18 May 2018 requesting payment to £158 for a bath panel to be replaced. She confirmed she had not recovered this sum from the Respondents. The Applicant's position was that the damage to the bath panel had been caused by the Respondents not taking reasonable care with water round the bath. This was even though she had had a glass panel installed along with the shower curtain.
15. The Applicant advised that there had been communication between her letting agents and the Respondents regarding the reporting of faults during lockdown.
16. The Applicant confirmed that before the tenancy began she had requested routine inspection of the Property by the letting agents on a three monthly basis.
17. Reference was made by the Applicant to a letter from Building Validation Solutions who were her insurers dated 9 October 2021. In the letter the insurers advise they are unable to confirm whether there is cover under the policy for the damage.

18. The Applicant made reference to an email from Building Validation Solutions dated 3 March 2022 in which they say their surveyor had reviewed photos sent in by the Applicant and there was no cover under the policy as the damage had clearly been ongoing for some time with no action taken to mitigate the damage. The Applicant confirmed she had never received any insurance money in respect of the kitchen ceiling.
19. The Applicant confirmed that no-one had contacted her about issues with sealant in the bathroom or grouting or water coming in.
20. The Applicant confirmed the photos lodged of the damage to the kitchen and bathroom were a true representation of the damage. She wasn't completely sure what was immediately above the area of the kitchen ceiling but her husband would know.
21. The Applicant confirmed that she had accepted the cheapest quote for the work to be carried out which was for Aber Flooring Ltd. They repaired the damage including replacing the pipework in the bathroom.
22. The Applicant advised that there had been previous issues with the Property including the banister, rainwater damage, a damaged bath panel, the Property had been broken into with the key in the door. She wanted the Property back as the Respondents had not complied with the terms of the tenancy agreement.
23. In cross-examination, the Applicant stated that her Property was of a high specification. With reference to the seal around the bath and wash hand basin the Applicant stated that the Respondent should maintain those. In Cross-examination the Applicant confirmed that during 2017, 2018 and 2019 the Letting Agent had carried out three monthly inspections of the Property.
24. The Respondents had reported the issue with the kitchen ceiling the day it happened.
25. She advised that the reason for changing the pipework was that the old pipes did not match with the new sink. The plumber had advised there was no leak.
26. The Applicant's position was that there was no leak and had there been a leak it would have been fixed there and then. She confirmed that she had not seen the surveyor's report for the insurers.
27. The Applicant's position was that the damage hadn't happened overnight.
28. She confirmed that since the pipes had been replaced the problems had stopped. She advised that she had given notice that she intended to commence eviction proceedings in advance of March 2022.

29. The Applicant confirmed she wished the family to be evicted so she could repair the Property. She did not know what she would then do with the Property if she got an eviction order.
30. The applicant was unable to provide copies of routine inspection reports.

Evidence of Paul Dillon, handyman

31. The evidence of Mr Dillon was taken out of turn as he had indicated he was only available until midday on the day of the hearing.
32. Mr Dillon confirmed that he was a handyman with six years experience. He advertised his services on Yell and Gumtree.
33. He had been contacted by the Respondent quite some time ago in approximately January 2022. They asked him to attend at the Property as there was a leak in the upstairs bathroom affecting the kitchen. He had found the sink to be dry but the unit the sink sat in was saturated at the bottom. He couldn't see the pipes behind the unit so had returned about a week later with a mirror and a torch. It was very awkward to get into.
34. Mr Dillon referenced a video he had taken which had been lodged by the Respondent. It showed copper pipes which were corroded. On inspection it was wet round the copper pipe. It was Mr Dillon's view that there was definitely leaking from the copper pipe.
35. Mr Dillon had provided a quote which was production number 4.
36. Mr Dillon's view was that there was no way the Respondents could have accessed the pipe.
37. He believed that eventually the unit had been moved and the repair work had been carried out.
38. Mr Dillon did not believe the water damage was in any way the fault of the Respondents.
39. On cross-examination, Mr Dillon said there was water on the pipes but couldn't see it on the video. There was definitely water coming from the pipe. Everything else was completely dry
40. Mr Dillon did not recall having a detailed look around the rest of the bathroom. He did not recall anything else being glaringly wrong in the bathroom.
41. He conceded that damp air would gravitate towards an old copper pipe. His view was that the pipe was corroded as it had been constantly saturated. He did not believe condensation would cause the pipes to go green.

42. Mr Dillon confirmed that the unit under the sink was definitely wet at the bottom. The Respondent may have been unaware of this. The Respondents would not have seen the leak when they opened the cabinet door.
43. Mr Dillon thought it unlikely that the damage in the cabinet had been caused by overspill from the sink.

Evidence of Clark Coyler, the Applicant's husband

44. Mr Coyler confirmed he was an engineer and had been a chartered engineer since 1980.
45. On the day in question he had been in Glasgow and attended at the Property as the damage needed fixed straight away.
46. Mr Clark attended at the Property at the same time as the emergency plumber from SJM. They entered the kitchen which was clean and dry and a part of the kitchen ceiling had collapsed beneath the area of the bathroom sink.
47. There had been a mark on the kitchen ceiling below the bath.
48. Mr Coyler's expectation had been that he would find a leak and that the water would need isolated and repairs carried out. The plumber had been instructed to do everything necessary to repair the leak.
49. They assumed the water was coming from the bathroom and went there to find the leak but the plumber had struggled to find any leak.
50. Mr Coyler had assisted in trying to find the leak. The damage was huge so he had expected them to find the leak easily.
51. They removed a panel between the toilet and the bath to look at the pipes. The plumber had looked under the bath. There was water damage noted above the bath. The wall covering around the bath had lifted at the bottom and the floor tiles had lifted.
52. Mr Coyler recollected that there were signs of water damage in the bathroom cabinet and one of the doors of the cabinet was falling off. He had asked the first Respondent why the cabinet door had not been reported and he had said he used the other door.
53. All the surfaces had been dry but the tiles in front of the cabinet and front of the bath had lifted.

54. Mr Coyler had asked the Respondent about the stain on the kitchen ceiling above the cooker which is below the bath. He was told this had appeared during the pandemic and had not been reported.
55. The sink unit had ultimately been replaced. The damage was extensive. A pedestal sink had been put in and the flooring had been repaired. The area above the bath had been repaired and new sealant put in place.
56. The pipework had had to be replaced as the existing pipes didn't line up with the new pedestal sink.
57. Mr Coyler's position was that the emergency plumber had looked at the back of the sink and found no leak. He could not work out how the front of the vanity unit had got damaged by a leaking pipe.
58. Mr Coyler had assisted his wife with the insurance claim. They wanted the money to effect the repairs.
59. Mr Coyler had not been present at the Property when the surveyor from the insurance company had attended the Property.
60. The bath panel had been professionally installed as part of the new bathroom in 2016. In 2018 he had replaced the bath panel as it had been damaged due to water overspilling. He had reminded the Respondents at the time to use the shower panel and shower curtain.
61. There had been a previous leak in the study due to water coming in a skylight window in the study. He had been able to paint the water marks and asked the Respondents to make sure the skylight was shut.
62. He had arranged a carpenter to repair the damaged stair banister.
63. There were issues with a smashed window and the house being broken into. Mr Coyler had arranged for an outside sensor light to be fitted.
64. On one occasion he had noticed a broken garden gate panel which had been broken from the garden side.
65. In relation to the break in, keys had been left in the door allowing the break in to happen.
66. Mr Coyler was disappointed damage hadn't been reported right away.
67. On cross examination Mr Coyler said that the pipework need replaced due to a different type of sink being fitted not due to a leaking pipe.

68. Mr Coyler confirmed that the pipes were in the same condition as seen on the video.
69. Mr Coyler's view was that the Respondents hadn't complied with the lease and didn't report damage on time.
70. He confirmed there had been no issues with the bath panel since it had been replaced.
71. There had been no further issues with water ingress at skylight since Respondents had been reminded to close the skylight.
72. There had been no issues with the banister since it had been fixed.
73. There had been a number of issues with the Property. The damage to the gate panel had not been reported.

Evidence of first Respondent

74. The first Respondent resides at the Property with his wife and three children, a daughter age 22, a son age 20 and a daughter age 12. They rent the Property from the Applicant but usually deal with her letting agency.
75. The Applicant is seeking to evict him because of the kitchen ceiling collapsing. Part of the ceiling came down.
76. On the day the ceiling came down the family had been upstairs and the children getting ready for school and college. They heard a noise and went downstairs to find the kitchen ceiling had collapsed. This was in September 2021.
77. The sink in the bathroom was directly above the area where the ceiling had collapsed.
78. The emergency plumber and Mr Coyler had attended and said there was no leak but there continued to be water in the broken ceiling and in sink unit. They used a cloth to soak up the water in the sink unit and reported it to the letting agents.
79. The cabinet under the sink in the bathroom was not used very often. It wasn't used to store products they use all the time.
80. The plumber couldn't identify a leak but there was still a lot of water. He contacted Mr Dillon. Mr Dillon checked the cabinet and behind the cabinet. The broken ceiling was still wet. Mr Dillon wanted permission to remove the cabinet but permission was refused. He came back a week later with a mirror and torch and found a leak. They took a video which is lodged with the Tribunal

and shows corrosion on the pipe. The pipe was wet and this was going to the ceiling downstairs. The video was sent to the letting agents.

81. The first Respondent agreed to stop using sink and only used the bath tub. He does not recall the sink overflowing or overspilling.
82. The first Respondent had contacted Citizens Advice for help with the fact that the Applicant was holding him responsible for the damage.
83. The eviction notice was then received.
84. Mr Neil, of JN Plumbing, also attended but could not access the top of the cabinet. He said the seal at the back of the sink was broken and water might be going down to the kitchen ceiling.
85. The repairs were eventually carried out. The bath tub was repaired, a new sink was put in and a new ceiling downstairs. Since the work has been carried out there have been no issues with the bathroom. The Respondents have not changed the way they use the bathroom.
86. The issue with the skylight happened not long after they moved into the Property. Mr Coyler had fixed it and there had been no problems since.
87. The handrail at the stairs had been wobbly when going up the stairs. He had reported it to the letting agents. The Applicant had sent a carpenter who had put another panel on and reinforced it. There had been no further issues with the handrail.
88. Regarding the bath panel, his youngest daughter would sometimes lean against the panel. Mr Coyler had repaired it and there had been no further issues.
89. Someone had thrown a stone against the window and broken it. This had been reported to the Police. The window had been fixed and there had been no problems with it since.
90. They had three monthly inspections from the letting agents and report any problems immediately.
91. The first Respondent thought it would be unfair for the eviction order to be granted. They had tried their best. The Property was ideal for them. It was close to his daughter's school and they were established there. His youngest daughter is in second year at Springburn Academy, his son is in third year at University and his daughter is in third year at University in Edinburgh. She commutes to Edinburgh from the Property. An eviction would affect the kids' education and exams.

92. The first Respondent has high blood pressure and is on medication from his GP. Stress does not help. His wife is HIV positive. They have taken steps to find alternative accommodation. North Glasgow Housing Association have told him there are no properties for a family his size. They still have nowhere to go. The local authority has said it will be a challenge to house them in the area. There would be a negative effect on the family. His youngest daughter is very shy.
93. The first Respondent confirmed he is in receipt of Universal Credit and works. He recalls only being late with rent payments twice and he had always kept the letting agents informed. The whole eviction process has been stressful and emotionally hard.
94. On cross examination the first Respondent said he had mentioned the problems with the sealant to the letting agents. He had been advised that the type of tiles on the bathroom floor should not have been used in a bathroom. He said that water could have splashed down the back of the sink. This would not have been enough to cause the ceiling to collapse.
95. The first Respondent agreed that the photographs and inventory were accurate as to the condition of the Property when they moved in.

Evidence of Second Respondent

96. The second Respondent advised that she resided in the Property with her husband and three children.
97. The Applicant wanted to evict them as they were blaming the family for repairs needing done to the Property. They were being blamed for the kitchen ceiling collapsing and had tried to show it wasn't their fault.
98. There had been a tiny mark on the ceiling which she thought might have been mould.
99. They had reported the ceiling collapse to the letting agents who sent someone to look at the damage and had concluded there was no leak.
100. Water continued to drip from the ceiling. She believed there still to be a leak.
101. Cleaning products had been stored at the front of the cabinet under the bathroom sink.
102. Water continued to collect in the cabinet and the second Respondent had used towels to soak up the water. The towel was wrung out twice a day and changed every day.

103. The continuing water leakage was reported to the letting agents.
104. The water ingress through the open skylight was a one-off problem at the beginning of the tenancy.
105. The problem with the broken banister had happened as the beginning of the tenancy. Work was done to secure the banister.
106. The bath panel had been made of something like fibre glass. Her knees were up against it when bathing her youngest daughter and it had cracked and had required to be fixed. Since it was fixed she has not notice a lot of water getting on the floor after showers.
107. The second Respondent believed a brick had been thrown at the garden gate causing the damage.
108. The police had attended after the issue with the kitchen window. There had been no further issues with windows at the Property.
109. The response from the Applicants generally in relation to damage to the Property was that the Respondents were always to blame.
110. The second Respondent suffered from high blood pressure, was HIV positive and the prospect of being evicted had affected her mental health.
111. The family loved the Property. They had made the Property their home. They have lived in the community for 12 years. They have connections and their children had attended the local school. They have made their life in the area of the Property.
112. The second Respondent had had to tell her children about the application for the eviction order. This has had an impact on their mental health too.
113. The second Respondent's youngest daughter is doing well at school.
114. There is no alternative accommodation in the area.
115. In cross examination, the second Respondent said the stain on the kitchen ceiling in the photos lodged was different to the tiny mark she had seen where the ceiling had collapsed.
116. There was about 500ml of water in the towel each time she squeezed it out.
117. She recalled the last inspection of the Property being in approximately January this year.

Submissions for Applicant

118. Mr Gordon's submissions were that the Tribunal had to decide the matters of fact. The Applicant and witness had given evidence honestly and to the best of their knowledge. They were not incredible.
119. Brenda at the letting agents was no longer employed there hence there was only a letter available from the insurers outlining why the insurers were refusing to pay out on the claim.
120. The insurers had advised the Applicant that there was blame to be attached to the Respondents in respect of the damage. The Respondents had a duty to take care of the Property.
121. The evidence from Mr Dillon had to be viewed against the background that he was not a qualified plumber.
122. Weight should be given to the surveyors report which was influenced by the investigations the plumber undertook.
123. The tenancy was a short assured tenancy. An AT5 had been issued to the Respondents. The Applicant had a special right to repossess. Now reasonableness has to be factored in. It was reasonable in the circumstances to grant the eviction order sought.

Submissions for Respondent

124. There was no dispute that the notices were served and were valid.
125. In assessing reasonableness, there are no prescribed factors the Tribunal has to take into account. The Tribunal can take all circumstances into account.
126. The burden is on the Applicant to show that the granting the eviction order is reasonable. It's not for the Respondents to show that the granting of the eviction order is unreasonable.
127. There were no expert reports lodged regarding the damage to the kitchen ceiling. The only evidence of the part of the Applicant is third hand evidence of the insurance company quoting a surveyor who came out to the Property.
128. The Applicants have no expertise apart from their interest in other properties.
129. Whereas Mr Dillon has several years experience as a handyman. He gave evidence of corrosion to the pipes behind the cabinet in the bathroom.

130. There had been no issues since repairs to the bathroom and kitchen had been carried out.
131. Regarding the additional issues with the Property, in each of the cases the issues had been reported and dealt with apart from the garden gate. The work had been carried out in each case and there had been no further issues.
132. There had been no breach of the tenancy agreement and his submission was that the Applicant had not made out a case for the granting of the eviction order being reasonable.
133. The application was personal and the Applicant wanted rid of the family. There were no other circumstances that would render it reasonable for the Applicant to recover the Property.
134. That compared with the position of the Respondents who had hypertension, mental health issues and other health issues. Their children were at a crucial stage in their education. Uprooting the family from the Property at this stage may mean the family being broken up.
135. In all the circumstances, it was not reasonable for the eviction order to be granted.

Findings in Fact

136. Findings in Fact
- Parties entered into a short assured tenancy agreement from 1 December 2016;
 - Notices to Quit and section 33 notices had been validly executed and served on the Respondents;
 - Tacit relocation was not operating;
 - There had been a number of issues with the Property since the Respondents had moved in;
 - Most of the issues had been minor in nature and easily fixed;
 - The major issue was the collapse of the kitchen ceiling due to water damage in the upstairs bathroom;
 - The Applicant's Insurers had refused to pay out for repairs to the bathroom and kitchen ceiling as they had classed it as an uninsured loss.

- The Tribunal found that, on the balance of probabilities, on the evidence before it, the ceiling collapse had been caused by a leaking corroded copper pipe behind a bathroom unit with perhaps a contribution from water going down the back of the sink where the sealant was compromised.

Reasons for Decision

137. The Tribunal took into account all the written evidence and papers before it along with the oral evidence and submissions at the hearing. It was disappointing that no insurance surveyors report had been lodged and no written inspection reports from the Letting Agents had been lodged in support of the Applicant's case. Mr Dillon, who had nothing to gain from the outcome of the application, had witnessed what he was sure was water leaking from a corroded pipe behind the bathroom cabinet. The evidence pointed to the Respondents complying with instructions from the Applicants in relation to previous repairs needing carried out to the Property. Most of the Property damage, aside from the collapse of the kitchen ceiling, concerned minor issues to be expected in a Property let to a family over a period of time. The Tribunal weighed up the desire of the Applicant to take repossession of the Property due to worries it was not being properly looked after by the Respondents with the impact an eviction order would have on the Respondents. The Applicant did not know what she was going to do with the Property if she was granted the eviction order sought. The Respondents both suffered from health problems and the granting of an eviction order was likely to be of great negative impact to them and their children. They had searched for alternative accommodation in the area but there was no suitable alternative accommodation available. In all the circumstances, it was not reasonable for the eviction order to be granted.

Decision

138. The Tribunal decided to refuse the application for an eviction order in respect of the Property.

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.

Anne Mathie

13 February 2023

Legal Member/Chair

Date

Anne Mathie