

Housing and Property Chamber
First-tier Tribunal for Scotland



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 (“the Act”) and Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/EV/22/1935

Re: Property at 2, Ettrick Court, Cambuslang, Glasgow G72 7YG (“the Property”)

Parties:

Mrs. Susan Thomson residing at 7, President Terrace, MacLeay Island, Queensland 4184, Australia (“the Applicant”) per her representative Miss Siobhan Cairney residing at 134, Fernbrae Avenue, Rutherglen, Glasgow, G73 4AG (“the Applicant’s Representative”)

Mr. Scott McCulley residing at the Property (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Leslie Forrest (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) having determined that the tenancy between the Parties was terminated by a valid Notice to Quit, further determined that it is reasonable to issue the Order sought and so the Tribunal granted the Application and issued the Order with an effective date of 31 March 2023.

Background

1. By application received between 20 June 2022 and 22 August 2022 (“the Application”), the Applicant applied to the Tribunal for an Order for eviction and possession of the Property based on the ground that the tenancy between the Parties had been terminated by Notice to Quit in terms of Section 33 of the Act and that the Respondent and his partner, Ms. Kirsty Thomson and their family had failed to remove from the Property. The Application comprised a copy of a short assured tenancy agreement between the Applicant and her husband and the Respondent, copy Notice under Section 32 of the Act, copy Notice to Quit in the correct statutory form and copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to South Lanarkshire Council, being the relevant local authority. A letter of consent to the proceedings by the Applicant’s husband as co-owner of the Property and a letter appointing the Applicant’s Representative were lodged with the Tribunal.

2. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") was fixed for 29 November 2022 at 14.00 by telephone conference.

CMD

3. The CMD took place on 29 November 2022 at 14.00 by telephone conference call. The Applicant did not take part and was represented by Miss Cairney. The first-named Respondent took part and was not represented. Although the CMD had been notified to Ms. Kirsty Thompson, she did not take part in the CMD.
4. The Tribunal explained that the tenancy between the Parties was a short assured tenancy which had been terminated by the Applicant and her husband as landlords as it had come to an end. The Tribunal explained that the landlords are entitled to bring the tenancy to an end without fault or breach of the tenancy agreement by the Respondent. Therefore, the Tribunal did not require to have regard to the reasons for the tenancy being terminated. However, the Tribunal had to be satisfied that it is reasonable to grant the Order. The Tribunal asked Mr. McCulley if he accepted the Application on the basis of reasonableness. Mr. McCulley stated that he did not accept that it was reasonable for an Order to be granted on the basis that the Property had been his and Ms. Thompson's family home for thirteen years and that they and their children had no alternative accommodation.
5. The Tribunal invited the Parties to explain that the background issues to the Application.

Applicant's Position

6. On behalf of the Applicant, Miss Cairney advised the Tribunal that the Property is owned by her mother and stepfather who are resident in Australia. The Property has an interest only mortgage of around £60,000 secured against it, the term for repayment of which expires in December 2023. She explained that her mother and stepfather cannot afford to repay the mortgage and are not in a position to re-mortgage the property and so require to sell it. She explained that significant upgrade work will need to be carried out to achieve the best price for the Property and that her mother and stepfather need time to do this work ahead of selling and so require possession of the Property ahead of the mortgage expiring. Miss Cairney advised the Tribunal that it appeared that the letting agents previously used by her mother and stepfather had not been pro-active in ensuring that the Property was properly maintained and so redecoration, new flooring, a new kitchen and a general upgrade are required. She explained that her mother and stepfather hoped to achieve a price of £140,000-£150,000 if the Property is upgraded and vacant.

Respondent's Position

7. Mr. McCulley advised the Tribunal that he and Ms. Thompson have resided in the Property with their four children aged 22 years, 19 years, 16 years and 13 years for around thirteen years as their settled family home. He stated that his two older children both worked part-time, that he is in employment and Ms. Thompson is a self-employed hairdresser. He advised the Tribunal that he had made an initial enquiry with the local

authority for housing in March 2021 but had been told that there were no properties available for a family of six. He advised that he and Ms. Thompson are not able to afford to buy a suitable property in the area of the Property. Mr. McCulley explained to the Tribunal that he had made and paid for improvements to the Property over the years and had decorated the Property with the consent of the Applicant. Mr. McCulley advised the Tribunal that he and Ms. Thompson had discussed buying the Property from the Applicant but that this had not come to fruition as the Property required a new roof which affected the price which could be paid. Miss Cairney confirmed that the Applicant was aware that the Respondent could not afford the asking price for the Property.

Issue for the Tribunal

8. The statutory grounds and the procedure being established, the issue for the Tribunal was to determine if, on the facts, it is reasonable to grant the Order. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal “*may do anything at a case management discussionincluding making a decision*”. The Tribunal, having adjourned to consider the facts fully, took the view that it had sufficient information to make a decision on reasonableness and so proceeded to determine the Application.

Findings in Fact

9. The Tribunal found the following facts established:
 - i) The Parties are as set out in the Application;
 - ii) There was a short assured tenancy of the Property between the Applicant and her husband and the Respondent;
 - iii) The Applicant and her husband terminated the tenancy by Notice to Quit in terms of Section 33 of the Act;
 - iv) The Respondent, his partner, Ms. Thompson, and their family remain residing in the Property;
 - v) The Applicant and her husband require to sell the Property to redeem the mortgage secured against it;
 - vi) The Applicant and her husband require vacant possession of the Property in order to sell the Property at the best price;
 - vii) The Respondent, Ms. Thompson and their four children have resided in the Property as their family home for thirteen years;
 - viii) The Respondent, Ms. Thompson and their two adult children are in employment;
 - ix) If an Order is granted, the Respondent, Ms. Thompson and their two school age children are eligible for local authority rented accommodation in terms of the homelessness legislation.

Decision of the Tribunal and reasons for the Decision

10. The Tribunal accepted the Parties’ oral submissions which were detailed and given in a straight-forward and truthful manner.

11. The Tribunal accepted that the Applicant and her husband cannot to redeem the mortgage secured against the Property and that they require to sell the Property, failing which it is likely to be repossessed by their mortgage lender. The Tribunal accepted that they are entitled to try to achieve the best price possible for the Property, and, to do so, they require vacant possession of the Property.

12. The Tribunal accepted that the Respondent and his family considered the Property to be their settled family home and, that if an Order is granted, they will need to secure alternative accommodation. The Tribunal had regard to the terms of the Housing (Scotland) Act 1987 and the Homelessness Etc (Scotland) Act 2003 which impose an absolute duty on the local authority to provide suitable permanent accommodation for a family with a child. The Tribunal took the view that the safety net of the local authority's absolute duty to provide suitable permanent accommodation for the Respondent and his family ensures that they will be able to secure permanent accommodation.

13. The Tribunal's task was to weigh up these facts in respect of reasonableness. The Tribunal took the view that the Applicant's need to sell the Property outweighs the need of the Respondent and his family to remain in the Property. Therefore, the Tribunal was satisfied that it is reasonable to issue an eviction order. Having made that decision, the Tribunal took the view that, with regard to the Respondent and his family's personal circumstances, it is appropriate to allow the Respondent sufficient time to secure alternative accommodation and so determined to make the Order for possession effective from 31 March 2023.

14. This Decision is 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.

Karen Moore

Legal Member/Chair

29 November 2022
Date

