



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 1988 Act”) and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/23/2883

Re: Property at 453 Kingspark Avenue, Glasgow, G73 2AS (“the Property”)

Parties:

Mr Rana Mohammed Aslam, 66 Rossendale Road, Glasgow, G41 3RH (“the Applicant”)

Ms Donna Holmes, 453 Kingspark Avenue, Glasgow, G73 2AS (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Tony Cain (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for the order for possession should be granted.

Background

1. By application received on 22 August 2023, the Applicant sought an order under Section 33 of the Housing (Scotland) Act 1988 (“the Act”) for possession of the Property on termination of a Short Assured Tenancy. The application was made in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). Supporting documentation was submitted with the application, including a copy of the Tenancy Agreement; AT5; Notice to Quit, Section 33 Notice and Section 11 Notice to the local authority; and proof of service of notices. An application for a payment order was also lodged, together with this application and the

applications have been conjoined. The conjoined payment application has reference FTS/HPC/CV/23/2885.

2. On 7 September 2023, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance in respect of the application in terms of Rule 9 of the Regulations.
3. A Case Management Discussion (“CMD”) was fixed for 6 December 2023 at 10am. The application and details of the CMD fixed were served on the Respondent by Sheriff Officer on 27 October 2023. In terms of said notification, the Respondent was given an opportunity to lodge written representations by 14 November 2023. No representations were lodged prior to the CMD.

Case Management Discussion

4. The CMD took place on 6 December 2023 at 10am by telephone conference call. The CMD was attended on behalf of the Applicant by Ms Kirsty Donnelly, Solicitor of TC Young solicitors and Ms Simone Callaghan, Paralegal, also of TC Young, in the capacity of observer only. The Respondent, Ms Donna Holmes was also in attendance.
5. Following introductions and introductory comments by the Legal Member as to the purpose of the CMD and the procedure, Ms Holmes, the Respondent, was asked to confirm her position in respect of the application for eviction. She confirmed that, although she was opposing the application for a payment order in the amount sought, she was not wishing to oppose the eviction. Her position is that, although she has rented the Property for a long time (10 years) from the Applicant, she is not prepared to pay the rental increase which the Applicant imposed on her from £750 to £1,200 per month as this is too expensive, particularly as she considers the Property to be in poor condition. Ms Holmes explained that there have been a lot of repairs issues with the Property which have not been resolved. In particular, there is really bad dampness which has caused wallpaper to come off and damage to her carpets and furnishings. It is also difficult to heat because of its condition and Ms Holmes stated that it is not watertight and has had recent issues with a bathroom tap not working. She said that, although there have been various inspections carried out and talk previously about the Property being upgraded in line with a rent increase, the upgrading never happened. Ms Holmes thinks that the Applicant really just wants her out. A Notice to Quit was served previously, just after lockdown, but was never followed through. Ms Holmes confirmed that she lives at the Property, which has four bedrooms, with her partner and two children, aged 15 and 13. She has an older adult son who previously lived with them but has now moved out. Her partner is self-employed and they are also in receipt of Universal Credit. Her partner also has some health issues but they were referred to Money Matters and are now getting some assistance with benefits. She has previously had advice from Shelter and CAB in relation to the various issues. Ms Holmes has also been in contact with the homeless team of the local authority and hopes to get a three-bedroom property but has been told that this will not happen until the Tribunal process has completed. Ms Holmes confirmed

that she now wishes to be out of the Property as it is unaffordable and given its condition. She accordingly does not wish to oppose the eviction going through.

6. Ms Donnelly indicated that she was not aware of the repairs issues side of things as she did not have instructions on that. She invited the Tribunal to grant the eviction order today, given that it was unopposed and perhaps to continue the application for a payment order in the circumstances. As to the eviction order sought, she explained that all of the notices, etc had been served properly, giving the required 2 months' notice. Although the ground for eviction was that the short assured tenancy was being brought to an end under Section 33, Ms Donnelly explained that the reason behind this is that the Applicant requires to live in the Property himself. She explained that the Applicant previously occupied the Property as his family home and that he currently occupies another property, together with ten members of his extended family. That property has four bedrooms but is overcrowded and the intention is therefore for the family to split between the existing property and this Property. Ms Donnelly also mentioned, in connection with reasonableness, the fact that there are rent arrears, although the amount may be disputed. She referred to the fact that no rent was now being paid at all, following service of the notices, and that the Respondent had confirmed that. Ms Donnelly also stated that she understood from the Applicant that there had been difficulties with his agents getting access to the Property for the purpose of taking photographs and inspection and that the Applicant's agents had tried to arrange access around four weeks ago, to no avail. Ms Holmes disputed this and stated that the last access was around six months ago, when an inspection took place, but that she had not received any contact from the Applicant's agents since then, seeking access.
7. The Tribunal adjourned the proceedings briefly in order to deliberate in private and, on re-convening, the Legal Member advised that the Tribunal had decided to grant the eviction order sought and that the detailed written Decision would be issued to parties shortly. The timescales for the order being issued and thereafter being enforceable were also explained to parties, given that this application is caught by the Cost of Living (Tenant Protection) (Scotland) Act 2022 ("COLA"). The parties were thanked for their attendance and the CMD was brought to a close.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant by virtue of a Short Assured Tenancy which commenced on 28 June 2013.
3. The Applicant ended the contractual tenancy by serving a Notice to Quit and Section 33 Notice on 24 April 2023, specifying the end of the notice period (2 months) as 27 June 2023, an ish date in terms of the lease. Both notices were in the correct form, provided sufficient notice and were served validly on the Respondent by way of Sheriff Officer.

4. The Respondent has remained in possession of the Property following expiry of the notice period.
5. This application was lodged with the Tribunal on 22 August 2023, following expiry of the notice period.
6. The Respondent participated in the CMD and does not contest the application.

Reasons for Decision

1. The Tribunal was satisfied that the Respondent understood the position and was not wishing to contest the eviction application.
2. The Tribunal was satisfied that pre-action requirements including the service of the Notice to Quit and Section 33 Notice in terms of the 1988 Act had been properly and timeously carried out by the Applicant prior to the lodging of the Tribunal application. Section 33(1) of the Act states that an order for possession shall be granted by the Tribunal if satisfied that the short assured tenancy has reached its finish; that tacit relocation is not operating; that the landlord has given to the tenant notice stating that he requires possession of the house; and that it is reasonable to make an order for possession. The Tribunal was satisfied that all requirements of Section 33(1) had been met.
3. As to reasonableness, the Tribunal considered the oral submissions of both Ms Donnelly and Ms Holmes at the CMD and took into account the circumstances of both parties in reaching their decision. The Tribunal was persuaded that the Applicant had a legitimate reason for requiring possession of the Property back, due to his own accommodation issues and family circumstances. The Respondent did not raise any issue concerning that, although she did take issue with the amount of the rent arrears being claimed and also the suggestion that she had not allowed access to the Property recently. She clearly felt that the Applicant just wanted her out of the Property. However, the Respondent was also clear that she did not now wish to continue residing in the Property. Although she and her family, including two dependant children, had lived in the Property for ten years, she now considers it too expensive and no longer wants to live there due to the issues with its condition. The Tribunal noted that she had had some advice on the issue and has already been in contact with her local authority from whom she is seeking alternative accommodation. The local authority are aware of the Respondent's housing needs and she is to inform them of the outcome of these Tribunal proceedings which the Respondent understands will give her homeless application more priority. The Tribunal was also aware, in granting the order today, that given the terms of COLA, there was still a fairly lengthy period before the order could be enforced and that this would provide the Respondent a further opportunity to secure alternative accommodation. In all of the circumstances, the Tribunal considered that the likely impact on the Respondent of granting the eviction order was outweighed by the impact on the Applicant were the order not to be granted. The Tribunal was therefore satisfied that it was reasonable to grant the order sought.

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.

N Weir

Legal Member/Chair

6 December 2023
Date