



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/22/4279

Re: Property at Flat 0/2 36 Gartuck Street, Glasgow, G42 8JF (“the Property”)

Parties:

Mr Mohammed Arshad, 25 Windyhill Avenue, Kincardine, Alloa, FK10 4QN (“the Applicant”)

Atif Aziz Khawaja, Flat 0/2 36 Gartuck Street, Glasgow, G42 8JF (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

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

Background

1. This is an application in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The application was dated 30th November 2022. The Applicant is seeking an order for recovery of possession in terms of section 33 of the Act.
2. A Case Management Discussion was held on 4th May 2023. The case was continued to a hearing as matters remained under dispute. This case was heard with the same Ordinary Member (Housing Specialist) but a different legal member. A direction was issued for more information from both parties.

3. There was a conjoined case EV/22/4280 which was concerned with a payment order application. This was withdrawn on 3rd July 2023.
4. On 8th June 2023, all parties were written to with the date for the Case Management Discussion (“CMD”) of 10th July 2023 at 10am by teleconferencing.

Hearing

5. A hearing was held on 10th July 2023 at 10am by teleconferencing. The Applicant was present and was represented by Mr Craig Chisholm, solicitor, Clarity Legal. The Respondent was present and represented himself.
6. Mr Chisholm said that the Applicant’s position was still that the Applicant was still seeking an order for possession. He said that the notices were valid and that there were no issues of reasonableness.
7. There had been issues raised around the rent account being in arrears. The Property is subject to a Rent Relief Order (“RRO”) after a Repairing Standards Enforcement Order (“RSEO”) was put over the Property and had not been adhered to within the time limits. The RRO had reduced the rent by 90%. This has not been applied to the rent account. Mr Chisholm acknowledged this and said that is why he had advised the Applicant to withdraw the conjoin case. The Rent account was no longer being relied upon in terms of reasonableness for granting an order for eviction.
8. Mr Chisholm said that the Property required to be vacant to allow all of the necessary works detailed within the RSEO to be undertaken. It was not clear if that would be two weeks or if it would be months. The Applicant explained that the situation regarding the repairs was not clear. Once the workmen were in the Property they will lift the floorboards and will only be able to assess the extent of the damage then. The walls will also need to be stripped and dried. The works cannot be done when the tenants are still in the Property.
9. Mr Chisholm said that there was an affordability issue for the Applicant as well. He has funds to address the repairs that need to be undertaken in the Property but cannot continue to do so with the Respondent in the Property as the RRO remains in place. The Property is mortgaged at a cost of £600 per month. He has further costs for the Property at £120 per month. Even without the RRO the rent for the Property is £600 per month which falls below his costs. More significantly the Applicant has an interest only mortgage which is being recalled by the bank. The Applicant has been given an extension for 6 months from February 2023. Mr Chisholm further explained that the Applicant has health issues that will require him to have surgery. He wishes to retire and sell his properties. He is in profit of £200 per month from his property portfolio. This is partly due to the increased costs of the rates of interest that he is paying. The Applicant cannot sell the Property until the work has been completed. Mr Chisholm submitted that it was reasonable to grant an order for eviction.

10. The Respondent said that he did not object to an order being granted. His mother had been very ill and could not move easily to another property. Very sadly she died in April 2023. This has meant that his personal circumstances have changed. His eldest daughter has now left school and is going to start university in September. He did not want to move while she was doing her exams. She will commute from her home as she is going to university locally. His other daughter is 16 and has just started fifth year of school. His eldest son is 14 and at high school. His youngest son is 9 and at primary school. The Respondent said that with his circumstances changed he has registered with his local authority as homeless. He has been accepted as homeless. He is actively seeking to move. He cannot afford a private tenancy. He had a message on Friday prior to the hearing from the local authority that there was a property for his family. The Tribunal allowed an adjournment for him to contact them to find out more information about this offer. He tried three times but there was no response. The Respondent is certain that he will be offered a property as he is willing to take any property that can accommodate his family. His biggest concern is that he needs to find a place for this family to live. It was noted by the Tribunal that this case is caught by the Cost of Living (Tenant Protection)(Scotland) Act 2022 which means that an order could not be enforced for six months. The Respondent does not wish to be decanted as it has taken so long for the repairs to be undertaken. He wishes to be in a new secure tenancy that he can settle in.
11. There was some discussion with the Tribunal about whether appropriate accommodation had been offered to the Respondent. With the passing of the Respondent's mother matters had changed the family's circumstances. It was clear from the Applicant that decanting would not be feasible due to the unknown time that the repairs would take. The Respondent said that he was not offered a suitable property to be decanted into. The Tribunal noted these points but also that parties had now considered that matters had moved on beyond this point.
12. The Tribunal considered that it was appropriate to grant an order for eviction as the Order was not opposed and there were no issues of reasonableness to prevent an order being granted.

Findings in Fact

13. The parties entered into a Short Assured Tenancy on 3rd April 2016 until 2nd October 2016. The rent payments of £600 are due on the 3rd day of each month.
14. On 9th October 2019 a Tribunal found that the Property did not meet the Repairing Standards. An RSEO was issued requiring the works to be undertaken within 6 months. Works to ensure the Property met the Repairing Standard were not undertaken during the specified time which resulted in an RRO being issued. The Applicant cannot undertake the repairs while the Respondent and his family are living in the Property.
15. The Applicant is under financial pressure as he is having the Property recalled by the bank. He has an interest only mortgage. He needs the repairs to be

undertaken to ensure that there are sufficient funds to pay the full amount due to the bank. He has an extension of the recall. This was issued in February 2023.

16. The Respondent's circumstances have changed which means that he is now able to move from the Property. As a consequence the Respondent is not opposing an order being granted. He and his family have been classified as homeless. He is waiting to be allocated a new property.

17. There are no issues of reasonableness preventing an order being granted.

Reasons for Decision

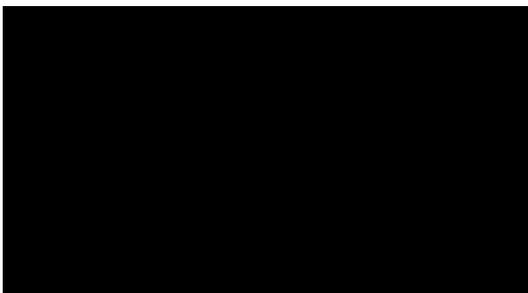
18. The Tribunal was satisfied that there were no other issues of reasonableness before them and that the notices had been served in an appropriate manner and that a Short Assured Tenancy had been entered into by the parties. Given this the Tribunal was satisfied all appropriate paperwork had been served the Order for repossession was granted.

Decision

19. The Applicant is entitled to an Order of for recovery of possession.

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

10th July 2023

Date