



**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/21/1211

Re: Property at 2/5 Murrayburn Place, Edinburgh, EH14 2RW (“the Property”)

Parties:

Mr Ahmed Al-Kashmim, 23 Lister Gardens, Oak Avenue, Bradford, BD8 7AG (“the Applicant”)

Mr Dariusz Andrusiak, 2/5 Murrayburn Place, Edinburgh, EH14 2RW (“the Respondent”)

Tribunal Members:

Lesley-Anne Mulholland (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an Order for Possession

BACKGROUND

1. An application was made under Rule 66 of the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an Order for Possession under a short-assured tenancy between the Landlord Applicant and Respondent Tenant.
2. The application contained :-
 - i. A copy of the tenancy agreement

- ii. a copy of the AT5
 - iii. a copy of the Section 33 Notice
 - iv. a copy of the Notice to Quit
 - v. evidence of service by Sheriff Officers
 - vi. Section 11 Notice with evidence of service
3. A Case Management Discussion was held on 16th of July 2021. Directions were issued for productions to be lodged in hardcopy format and exchanged between the parties and served on the Tribunal. This required a paginated and indexed Inventory of Productions.
4. The Applicant was not present at the hearing. He was represented by Mr Piggott of Lindsay's. The Respondent was present and represented by Miss Meikle from the Civil Legal Assistance Office. Miss Musko interpreted for the Respondent. The language used was Polish. We were satisfied that the Interpreter and Respondent could understand each other before commencing the hearing.
5. The hearing was conducted remotely by teleconference. We were satisfied that those present could hear and be heard. Sufficient time was given to enable the Interpreter to carry out her functions. The connectivity and sound were of a good quality and there were no apparent difficulties. Neither party brought any issue to our attention. We were satisfied that those present were given a fair opportunity to present their case.
6. The hearing was conducted remotely by teleconference. We were satisfied that those present could hear and be heard. Sufficient time was given to enable the Interpreter to carry out her functions. The connectivity and sound were of a good quality and there were no apparent difficulties. Neither party brought any issue to our attention. We were satisfied that those present were given a fair opportunity to present their case.
7. Neither the Applicant nor the Respondent has complied with Directions. The Applicant sent in the productions electronically and has not forwarded a hardcopy to the Respondent or the Tribunal. The electronic bundle produced is not indexed or paginated. The Respondent also failed to produce a hardcopy bundle. The Respondent has sent in 2 Inventories of Productions electronically which are indexed and paginated however the Respondent claims that the 2nd Inventory was sent electronically the day before the hearing and not at least 14 days before the hearing as Directed.

8. The failure to comply with Directions could have resulted in the hearing being adjourned. This failure has caused the Tribunal additional work and the hearing of evidence was delayed. Despite the Respondent claiming to have sent in the 2nd Inventory of Productions on the day before the hearing, the Clerk, despite carrying out a search, was unable to find them. Accordingly, I directed the Respondent's Representative to serve the 2nd Inventory of Productions electronically during the hearing.
9. After a short adjournment to enable the Tribunal to consider the Productions, and there being no objection, we decided to admit the Productions despite being in the wrong format, late, not paginated and not indexed as it was in the interest of justice to do so given the length of time the application has been outstanding and having regard to the overriding objective.
10. The Applicant relies upon 9 emails which incorporate evidence of suitable alternative accommodation following an Internet search. The Respondent relies upon 2 Inventories of Productions, representing, amongst other things, a letter from a Private Rented Sector Officer; evidence relating to a search for suitable alternative properties and information relating to the inability of the Respondent to secure suitable alternative accommodation despite having applied for same.
11. We shall refer to the evidence where required. A failure to refer to any specific document/evidence does not mean that this has not been considered.
12. Mr Piggott informed us that the Landlord Applicant was satisfied with the conduct of the Respondent in relation to his occupation of the property. He paid his rent on time and has occupied the property since 2014. The Applicant requires to occupy the property to enable his daughter to reside there. This was made known to the Respondent prior to the issuing of the Notice to Quit. The Notice to Quit was issued when it became clear that the Respondent had no intention of vacating the property. The Notice to Quit was issued in November 2020 and the application was made 6 months thereafter in May 2021, in compliance with the amended regulations following upon the pandemic.
13. The Respondent asks the Tribunal not to grant an Order for Possession for the following reasons: –

- i. The inability to find suitable alternative accommodation near to the child's school.
- ii. His reluctance to accept temporary accommodation on the basis that he would be required to remain there for around three years before being offered permanent accommodation.
- iii. He is in receipt of Working Families Tax Credit and some landlords refuse to enter into agreements with those in receipt of Social Security benefits.

ANALYSIS AND CONCLUSIONS

14. The Respondent submits that he has been unable to find suitable alternative accommodation. He has occupied the property since 2014 with his wife and nine-year-old child. The child goes to the local primary school and he does not want to change schools as he is settled and doing well there. He has applied for a number of properties and has not been successful. He was recently furloughed and since returning to work, his hours have been limited to a maximum of 30 hours per week. His overall income has not changed much as he is in receipt of Working Families Tax Credit. The difficulty in securing suitable alternative accommodation is because he is in receipt of Working Families Tax Credit and some landlords are reluctant to accept benefit claimants as tenants.
15. The Respondent has submitted copy emails relating to unsuccessful searches for alternative accommodation [Inventory 2/i-xii.] We reproduce here, for ease of reference, a summary of the unsuccessful attempts he has made:
 - i. 08/01/21 - Craigmillar - Wheatley Group
 - ii. 13/04/21 - Calder Grove - City Lets
 - iii. 13/04/21 - Calder Grove - PPM
 - iv. 30/05/21 - Broomfield Crescent - DJ Alexander
 - v. 01/06/21 - Hillcrest Application
 - vi. 06/04/21 - Harvesters Place - PPL
 - vii. 09/06/21 - Mid Market Rent - Hillcrest
 - viii. 22/06/21 - Fairbrae - Rent Locally
 - ix. 26/07/21 - Calder Gardens - 1Let
 - x. 20/08/21 - Sighthill Avenue - City Lets
 - xi. 20/08/21 - Stenhouse Gardens - Murray & Currie
 - xii. 30/08/21 - Colinton Mains Gardens - On The Market

16. It is clear from our consideration of the responses to the applications for housing, that some of the applications were refused because of unaffordability based upon the Respondents earnings and/or credit checks (overdraft) and others were refused because the property had already been let.
17. The Respondent explained that he had been furloughed during the pandemic and that when he returned to work he continued to receive some furlough when he worked less than 30 hours per week. As he is now working 30 hours per week he is no longer entitled to any furlough. Nevertheless, the Respondent explained that he is in receipt of Working Families Tax Credit and that the family income has remained much the same as it was before the pandemic.
18. The Respondent lives with his wife and nine-year-old child. Accordingly, he would require a two bedroomed home. The Respondent has been applying for accommodation for a monthly rental figure of between £695 and £800 per calendar month. The information provided from one of the Estate/Letting Agents shows that the Respondent earns £12,000 per annum. It is difficult to understand why the Respondent believes he could afford a property that would cost £8,400 -£9,600 per annum when his earnings are low.
19. The Respondent has failed to provide any evidence of searches for properties within his means. We appreciate the desire to remain in the same location and a nice home, however it is incumbent upon the Respondent to be realistic as to what he can afford and to apply for suitable housing. The fact that he has been unable to obtain unaffordable housing does not take him further.
20. The Applicant has provided the results of an Internet search within a 5-mile radius of the Respondent's address. These results show that there are a sufficient number of properties available for rent within a 5-mile radius.
21. The Applicant has made only 12 applications for the period from November 2020 to August 2021. We are not satisfied that this shows a genuine commitment to securing suitable alternative accommodation. According to Mr Piggott, the Landlord informed the Respondent of his requirement to repossess the property before the Notice to Quit was served in November 2020. This means that the Respondent has had more than 10 months to find suitable alternative accommodation. He has limited himself to and applied for properties in an area that he cannot afford.

22. The Respondent asserts that his nine-year-old son is settled at the local primary school and that it would be unreasonable to ask him to move schools. However, the Respondent's wife does not work, as the Respondent said that she has found it difficult to work around the school hours of 9 am to 3 pm. This of course means that the Respondent's wife is available to take the child to and from school. Accordingly, we are satisfied that the Respondent could widen the radius and apply for accommodation that is suitable to his means. His reluctance to do so is unreasonable.
23. It is the Respondent's position that he does not wish to be housed in temporary accommodation as it may take around three years for him to be offered a permanent home. We are not persuaded by this argument. The Respondent is currently not in permanent accommodation. He is in a short-assured tenancy. This tenancy was initially for six months and has been tacitly relocating since then. The Respondent would have known at the time of agreeing to the terms of the short-assured tenancy agreement that he could have been asked to leave on 3 months' (extended to 6 months' during the pandemic) notice. To follow the Respondent's position to its natural conclusion would mean that he should be entitled to reside in the property indefinitely. This is unreasonable.
24. According to a copy email from Joanna Pawlikowska, a Private Rented Sector Housing Officer at the City of Edinburgh Council dated 14 September 2021, the Respondent was advised about temporary accommodation but stated that he would rather avoid temporary accommodation and would prefer to apply for suitable accommodation in the Private Rented Sector. Since late April 21 he has applied for a few properties close to his child's school. He refused an offer from Hillcrest as this would require relocation and he does not want to change his child's school for a third time. He advised that he is limiting his options to one area.
25. By limiting his options only to the Private Rented Sector and to one area near his child's school, we are satisfied that the Respondent has not acted reasonably, particularly when there appears to be no reason why his wife could not take the child to school and back bearing in mind she does not work. The child is already at school and it is unlikely that the school will require the child to move. The Respondent has failed to demonstrate that he has applied for housing in an area where transport links would allow his wife to take the child to and from school.

26. The Respondent claims that some landlords are reluctant to accept benefit claimants and this is having an impact on his ability to secure alternative accommodation. The reasons given by the landlords or letting agents relating to the various applications he has made do not indicate this. They indicate instead of lack of affordability or that the properties were already let. Whilst we have some sympathy with the Respondent that his income is such that he is unable to afford the properties he is attracted to, we are nevertheless satisfied that to apply for housing he cannot afford is unreasonable. His rejection of the possibility of applying for temporary accommodation is hard to justify in the circumstances. The Respondent could continue to apply for suitable Private Rental Accommodation within his means whilst being housed in temporary accommodation.

27. Having considered all of the information before us individually and in the round, including the oral evidence and submissions, we are satisfied that it is reasonable to grant an Order for Possession.

DECISION

An Order for Possession of the property at 2/5 Murrayburn Place, Edinburgh EH14 2RW is granted to the Applicant.

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.

17 September 2021

Legal Member/Chair

Date