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

Chamber Ref: FTS/HPC/EV/23/2853

Re: Property at 8 Dalmarnock Drive, Bridgeton, Glasgow, G40 4LN ("the Property")

Parties:

Mr Momin Rabbani, 52 Albert Road, Glasgow, G42 8DN ("the Applicant")

Mrs Prandvera Gjonaj, 8 Dalmarnock Drive, Bridgeton, Glasgow, G40 4LN ("the Respondent")

Tribunal Members:

George Clark (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be decided without a Hearing and made an Order for Possession of the Property.

Background

1. By application, received by the Tribunal on 18 August 2023, the Applicant sought an Order for Possession of the Property under Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act"), namely recovery of possession on termination of a Short Assured Tenancy.

2. The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Parties, commencing on 10 March 2016 and, if not brought to an end by either Party on 9 September 2016, continuing on a monthly basis thereafter until terminated by either Party giving not less than two months' notice to the other party. The Applicants also supplied copies of a Notice given under Section 33 of the 1988 Act and a Notice to Quit, both dated 18 May 2023, and both requiring the Respondent to vacate the Property by 9 August 2023, with evidence of delivery of both Notices on 19 May 2023.

3. On 1 November 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 22 November 2023.

4. On 22 November 2023, the Respondent's representatives, Govan Law Centre made written representations to the Tribunal. They requested that the Tribunal dismiss the application on the ground that the initial term stated in the tenancy agreement, namely 10 March 2016 - 9 September 2016, was one day short of the required 6 months to create a Short Assured Tenancy. The tenancy was, therefore, an Assured Tenancy and the Applicant had not served on the Respondent a Form AT6 Notice with a valid ground for eviction.

Case Management Discussion

5. A Case Management Discussion was held by means of a telephone conference call on the morning of 13 December 2023. The Applicant was represented by Mr Imran Haq and Mr Keith Hassan of G4 Properties limited, Glasgow. The Respondent was represented by Ms Christine McKellar, senior solicitor, of Govan Law Centre.

6. The Tribunal Chair began the proceedings by advising the Respondent's representative that the Tribunal was not minded to dismiss the application. The case of *McCabe v Wilson (2006 Hous.L.R 86)* appeared to be directly in point. The wording of the tenancy in that case was virtually identical to that in the present case. The present lease was stated to be "for the period of 6 months from the 10 March 2016 ("start date") and will end on 9 September 2016 ("end date")". Read as a whole, as had been stated by the sheriff in *McCabe,* that clause only made sense if the Parties intended all of the first day and all of the last day to be treated as part of the lease, as it stated in terms that it was to be for a period of 6 months.

7. The Respondent's representative referred to the case of *Calmac Developments Limited v Wendy Murdoch (2012 WL 3062547)*, where, again, the sheriff looked to the wording of the lease to establish whether the parties intended the first day to be included. Ms McKellar contended that the present case could be distinguished from *McCabe*. She also told the Tribunal that the Applicant had not produced a copy of a signed and acknowledged Form AT5, essential for the creation of a Short Assured Tenancy and did not accept as conclusive of its service the fact that the Respondent had signed a lease in which she acknowledged that "he was served notice in Form AT5, before the creation of the tenancy" and pointed to the use of the word "he" as suggesting the particular provision might have been "cut and pasted" into the lease document. The Tribunal notes that the first paragraph of the tenancy agreement states that "words importing the masculine gender shall include the feminine."

8. The Applicant's representatives told the Tribunal that he is experiencing financial difficulty due to the increasing costs associated with letting the Property and is looking to sell it. The Respondent had expressed an interest

in possibly purchasing the Property and had, in a sense, been given "first refusal" but that had not progressed further.

9. The Respondent's representative was unaware of any discussions regarding a possible sale to the Respondent. She told the Tribunal that the Property has been the Respondent's home for a number of years and she is very settled there and has two children at the local school. She has applied to two Housing Associations for properties, as, if she has to move, she wishes to be in social housing, which provides greater protection against actions such as the present one. She works part-time as a care assistant and is a single parent. There are no known health conditions or vulnerabilities in the family.

10. The Tribunal Members' view was that they did not have sufficient information to be able to make a decision on whether it would be reasonable to make an Order for Possession and they decided that consideration of the application should be continued to a further Case Management Discussion, with the Parties being given a Direction to provide the Tribunal with any further evidence they wish the Tribunal to consider in arriving at a decision as to whether it would be reasonable to make an Order for Possession. The Applicant would be directed to provide a copy of the signed AT5 Notice referred to in the Tenancy Agreement and the Respondent would be directed to provide copies of any authorities on which she intends to rely in relation to her contention that the lease is not a Short Assured Tenancy, the Tribunal's preliminary view being that the *McCabe* case, based as it is on almost identical wording to the lease in the present case, is entirely in point. The Tribunal's Direction was issued on 13 December 2023.

11. On 13 December 2023, the Applicant's representatives provided the Tribunal with a copy AT5 Notice acknowledged by the Respondent on 10 March 2016 at 14.36 and a copy of an email from the Respondents to them of 9 March 2023 in which they expressed interests in purchasing the Property and asked for time to arrange a mortgage. On the same day, the Respondent's representative provided the Tribunal with a copy of the decision in the *Calmac Developments* case.

12. On 15 January 2024, the Respondent's representative made written representations on her behalf. She stated that her position remained that the tenancy is one day short of meeting the requirements that a Short Assured Tenancy must be for a term of not less than 6 months, in terms of Section 32(1)(a) of the 1988 Act. In order to comply with that Section, the tenancy would have had to commence at midnight on 10 March 2016 and terminate at the end of 9 September 2016. The Tenancy Agreement was signed at 2.38pm on 10 March, therefore the Respondent did not have access to the Property for that full day. As such, the usual method for calculating time in Scots law, *civilis computatio*, should apply, and the day on which the tenancy commenced should be excluded and the day on which it ended included.

13. In support of this proposition, the Respondents' representative cited the *Calmac Developments* case, in which the Sheriff looked at the wording of the

lease to establish whether the parties intended the first day to be included. That lease stated that "the date of entry will be 29 April 2011". The Sheriff took the view that the tenant "contemplated to take entry on that day", which created an exemption from the general rule excluding the first day, but said that without these words, a lease which runs "from" a specified date commences at midnight the following day. In the present case, the Tenancy Agreement states that the lease will run "from the 10th March 2016". Accordingly, the specified date commenced at midnight the following day, meaning that the first day of 10 March 2016 should be excluded from the term, resulting in the Agreement being for less than 6 months.

14. On 29 January 2024, the Applicants' agents provided the Tribunal with copies of an Invoice, from Homesbook Factoring Ltd showing arrears in his factoring account of £962.32 at 3 November 2023, a bank statement indicating that his monthly mortgage payments are £605.07 and a response from Slater Hogg and Howison, estate agents to an enquiry regarding the possible sale of the Property.

Second Case Management Discussion

15. A second Case Management Discussion was held by means of a telephone conference call on the morning of 24 March 2024. The Applicant was present and was represented again by Mr Haq. The Respondent was not present or represented. The Tribunal had intimated the date and time of the Case Management Discussion to the Respondent's representatives by email on 23 February 2024.

16. Mr Haq told the Tribunal that they do not insist on a certain time for tenants to call in to sign tenancy agreements, as they may have work or other commitments. The current rent is £650 per month and, when management fees and other costs, such as maintenance and meeting regulatory requirements incumbent on landlords are taken into account, he was making a loss every month on the letting. He did not have any other rental properties and confirmed that the Respondent's rent is paid up to date.

Reasons for Decision

17. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

18. Section 33 of the 1988 Act states that the Tribunal may make an Order for Possession of a house let on a Short Assured Tenancy if it is satisfied that the Short Assured Tenancy has reached its ish, that tacit relocation is not operating, that no further contractual tenancy is for the time being in existence, that the landlord has given to the tenant notice stating that he requires possession of the house, and that it is reasonable to make the Order for Possession.

19. The first question for the Tribunal to decide was whether the tenancy in the present case is a Short Assured Tenancy. Section 32 of the 1988 Act requires that a Short Assured Tenancy is for a term of not less than 6 months and in respect of which a Form AT5 Notice is served before the creation of the tenancy stating that it is to be a Short Assured Tenancy. The Act does not give any guidance on how the term of the lease is to be computed, so the general rule of *civilis computatio* will normally apply, with the date on which it commences being excluded and the date on which it ends being included. Applying that principle to the present case, the tenancy period would be one day short of the necessary 6 months. In the *Calmac Developments* case, however, the Sheriff stated that in his view the computation of the term of any lease is a matter of interpretation of its precise terms. The Tribunal agreed with this view. The Sheriff went on to state that, in that case, the wording was "The date of entry will be 29th April". This, he said, created an exemption to the general rule excluding the first date from computation, as it must mean that the tenant was contemplated to take entry on that date. Had it merely said "from 29th April", the Sheriff would have held that the normal *civilis computatio* rule applied.

20. The Respondent's argument was that, as the Tenancy Agreement states that the lease will run "from the 10th March 2016", then, following the reasoning of the Sheriff in the *Calmac Developments* case, the normal rule should apply. The full wording of Clause 1 of the Tenancy Agreement is, however, "The lease will be for the period of **6 months** from the **10 March 2016** (start date) and will end on **9 Sep 2016 (**end date)" and the view of the Tribunal was that, looking at the precise terms, the specific reference to a 6-month period created an exception to the general rule. It was clear from the wording that the intention of the Parties was to have a tenancy period of 6 months. Accordingly, the Tribunal held that the tenancy was for a period of exactly 6 months and is, therefore, a Short Assured Tenancy.

21. The Tribunal's finding on this point was fortified by the decision in the *McCabe* case, where virtually identical wording was used and the Sheriff had arrived at the same conclusion.

22. The view of the Tribunal was that the fact that the Tenancy Agreement was not signed until the afternoon was irrelevant. This had been considered by the Sheriff in the *Calmac Developments* decision and it had been held that the time of signature, handwritten on the lease document is not part of the contract. He added that, under the *civilis computatio* method of computing time, fractions of a day are ignored.

23. The Applicant had provided the Tribunal with a signed copy of the Form AT5 Notice, bearing the Respondent's acknowledgment at 14.36 on 10 March 2016, but the view of the Tribunal was that the same principle set out in Paragraph 22 of this Decision as regards time of signature of the Tenancy Agreement should apply to it. The Tribunal also noted that in Clause 26.1 of the Tenancy Agreement the Respondent specifically "acknowledges that he

was served notice in Form AT5, before the creation of this tenancy…and that he understands this tenancy to be a Short Assured tenancy within the meaning of Section 32 of the Housing (Scotland) Act 1988."

24. The Tribunal was satisfied that the tenancy had reached its ish, that, by service of the Notice to Quit, tacit relocation was not operating, that there was no further contractual tenancy in existence between the Parties and that the Notice required under Section 33 of the 1988 Act had been properly given. The remaining matter for the Tribunal to consider was, therefore, whether it would be reasonable to issue an Order for Possession.

25. The Tribunal noted that the Applicant's outgoings are likely to be significantly greater than the monthly rent he is receiving for the Property, given the amount of his mortgage payments, which are only £45 less than the rent, the factoring charges, the letting agents' fees and the cost of insurance and maintenance and of compliance with legislation and regulation. He has provided evidence of substantial arrears on his factoring charges for the Property. The Tribunal noted that the Respondent is a single parent with two children at local schools but, having considered carefully all the evidence, written and oral, before it, the Tribunal determined that it would be reasonable to make an Eviction Order. In doing so, the Tribunal noted that no fault lies with the Respondent, the evidence being that the rent is up to date.

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.

G. Clark

_____ **26 March 2024**

Legal Member/Chair **Date**