



**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”)**

**Chamber Ref: FTS/HPC/EV/23/0924**

**Re: Property at 4 Cartbank Grove (2/2), Glasgow, G44 3JD (“the Property”)**

**Parties:**

**Nevis Properties Ltd, 6th Floor Gordon Chambers, 90 Mitchell Street, Glasgow, G1 3NQ (“the Applicant”)**

**Ms Linda McLellan, Mr David Mackenna, 4 Cartbank Grove (2/2), Glasgow, G44 3JD; 4 Cartbank Grove (2/2), Glasgow, G44 3JD (“the Respondent”)**

**Tribunal Members:**

**Andrew McLaughlin (Legal Member) and Ann Moore (Ordinary Member)**

**Decision**

**[1] The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted the Application and made an Eviction Order.**

## **Background**

[2] The Applicant seeks an Eviction Order under s33 of the Act. The Application is accompanied by a copy of the tenancy agreement, the notice to quit and notice under Section 33 of the Act relied on together with the relevant notice under Section 11 of the Homelessness (etc) (Scotland) Act 2003.

[3] The Application had previously called for a Case Management Discussion (CMD) on 23 August 2023. The Respondents had been in attendance and indicated that they were opposed to an Eviction Order being granted. The Tribunal had continued the Application to a Hearing for evidence to be heard and explained to the Respondents that they should take legal advice without delay. A Direction was made also obliging the Respondents to set out their defence (which was that it was not reasonable to make an Eviction Order) within 21 days. Due to a Tribunal administrative error, that Direction appears never to have been formally sent out albeit it was explained verbally at the Hearing. Nothing was received from the Respondents in any event but they did instruct legal representation from Govan Law Centre.

## **The Hearing**

[4] The Application called for a Hearing by conference call at 10am on 14 November 2023. The Applicant was represented again by Ms McKendrick of Tay Lettings.

[5] The Second Respondent, Mr MacKenna was present along with his solicitor, Ms Holly Sloey of Govan Law Centre. Ms McLellan, now known as Mrs MacKenna, was not present and it was explained that she was feeling unwell. It was agreed that Mr MacKenna would be more than able to give evidence regarding both of the Respondents' circumstances and so the Tribunal decided to proceed on that basis. Ms Sloey did make a motion to adjourn the Hearing to allow medical records for Mrs MacKenna to be obtained. The Tribunal adjourned to consider that motion. It was

refused as it was considered to have come too late in the day, around three months after the original CMD where case management orders had been made and it had been made clear that the Application would be determined at the Hearing to be scheduled.

[6] These preliminary issues have been dealt with, the Tribunal began hearing evidence from Mr MacKenna and then from Ms McKendrick. Each side had the opportunity to cross-examine the other. The Tribunal also asked questions of each witness to ensure it understood the position. After hearing evidence each side made closing submissions. Thereafter, the Tribunal adjourned to consider its decision. Having done so, the Tribunal made the following findings in fact.

- I. *The Applicant acquired the landlord's interest in a tenancy agreement which let the Property to the Respondents;*
- II. *The tenancy agreement was a short-assured tenancy within the meaning of the Act;*
- III. *On 5 July 2022, the Applicant competently served a Notice to Quit and Notice under Section 33 of the Act on the Respondents calling upon them to vacate the Property by 24 September 2022;*
- IV. *The Respondents failed to vacate and have remained in occupation since;*
- V. *The Applicant has complied with s11 of the Homelessness (etc) (Scotland) Act 2003;*
- VI. *Mrs MacKenna has serious physical and mental health issues and is in receipt of Adult Disability Payment;*
- VII. *After receiving the Notice to Quit and Section 33 Notice, the Respondents began caring for a young grandson following on from a significant bereavement;*
- VIII. *The Respondents are in arrears of rent in the current sum of £1,687.50;*
- IX. *The Applicant wishes to sell the Property for commercial reasons;*
- X. *It is reasonable that an Eviction Order is granted;*

[7] Having made the above findings in fact, the Tribunal granted the Application and made an Eviction Order.

## **Note:-**

[8] The Tribunal felt sympathetic to the Respondents. They are clearly vulnerable individuals with particular health needs. They are also now primary carers for a young grandson for tragic reasons. Mr MacKenna gave evidence candidly and the Tribunal had no real reason to doubt his integrity albeit the Tribunal was perhaps less impressed with his explanations for the rent arrears. He seemed to make vague references to the impact of "covid" and the "cost of living crisis" which the Tribunal considered did not stand up to detailed scrutiny of the Respondents' own financial situation.

[9] The Tribunal also felt Ms McKendrick was entirely credible and reliable. She was candid that the Applicant wanted to sell the Property for commercial reasons. The Tribunal was not prepared simply to discount this reason as illegitimate. The Applicant had gone about their business in a dignified manner and the Application was driven by the needs of their own business rather than by any improper motivations. The Applicant had served the notices properly, they had faced the Respondents then failing to vacate the Property and they had participated in a robust Tribunal process.

[10] On balance, the Tribunal decided it was reasonable to grant the order sought. The Tribunal clearly had pause for thought, but that did not mean that the Tribunal considered it was any less legitimate to exercise the discretion afforded to the Tribunal in favour of the Applicant in this situation.

## **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.

A. McLaughlin

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Legal Member/Chair

14 November 2023

Date