



**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/23/2586**

**Re: Property at 5 Valgreen Court, Dundee, DD4 8XL (“the Property”)**

**Parties:**

**Wingman Ventures Limited, 165 Brook Street, Dundee, DD5 1DJ (“the Applicants”)**

**Mrs Lynsey Thompson, 5 Valgreen Court, Dundee, DD4 8XL and Mr George Thompson, whose present whereabouts are unknown to the Applicants (“the Respondents”)**

**Tribunal Members:**

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

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for an Order for Possession should be refused.**

**Background**

1. By application, dated 1 August 2023, the Applicants 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 Mrs Leanne Carling and the Respondents, commencing on 19 May 2017 and, if not brought to an end on 18 May 2018, continuing on a monthly basis thereafter until terminated by one month’s notice given by either party to the other party. The Applicants also supplied copies of an AT5 Notice dated 19 November 2012, and of a Notice given under Section 33 of the 1988 Act and a Notice to Quit, both dated 26 January 2023, and both requiring the Respondent to vacate the Property by 18 April 2023, with

evidence of delivery of both Notices on 27 January 2023. In addition, the Applicants supplied evidence of the transfer of title to the Property into the name of the Applicants, their title being registered in the Land Register on 30 September 2020.

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 13 November 2023, Dundee Law Centre, acting for the First-named Respondent, made written representations to the Tribunal. They sought a postponement of the scheduled Case Management Discussion, as the First-named Respondent was to be out of the country and joining the Discussion by telephone would incur roaming charges. The Tribunal, mindful of the need to be fair to both Parties and noting that the First-named Respondent's representatives appeared to be fully instructed, having lodged detailed submissions on her behalf, refused the request for a postponement.
5. The First-named Respondent's representatives stated in the submissions that she has lived at the Property since November 2012 and is well settled there. Her two daughters, aged 14 and 13, live with her and attend a local high school. She works as a Project Manager for the Under 12s Project in Dundee, who provide support to disadvantaged children in Dundee and their families. The Property is within a 5-minute walk from her workplace. If she were to be evicted, she would potentially have a period of homelessness and temporary accommodation. She has no rent arrears and has kept the Property in good condition and observed all the conditions of the lease over the last 12 years. They provided details of her income and confirmed that she receives Universal Credit to help pay the rent and some living costs. She also receives Child Benefit for her children. She is divorced from the joint-tenant and he has not lived at the Property since they separated in 2017. Her belief is that the motive for the application might be that, in 2022, the Applicants attempted to increase the rent from £620 to £800 per month. She could not afford that, as she can only receive £500 in respect of the housing element of Universal Credit. When she moved into the Property, she was assessed on the basis of a 3-bedroom house, as her son, now 19, was living with her. He has since left home. She would be prepared to negotiate an increase in rent, but not to £800 per month.
6. The First-named Respondent's representatives contended that in all the circumstances it would not be reasonable to make an Order for Possession.
7. On 21 November 2023, MML Law, Dundee, made further representations on behalf of the Applicants. They stated that the Applicants were not motivated by the First-named Respondent not agreeing to a rent increase. They are selling off a number of their properties. The monthly mortgage for the Property has increased to £936.77, so they are making a loss of £286.77 per month, not including other landlord's costs. Accordingly, it would be reasonable to grant the application, to allow the Applicants to sell the Property, as they are currently making a loss each month.

### **Case Management Discussion**

8. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 13 December 2023. The Applicants were represented by Mr Jay Lawson, solicitor of MML Law, Dundee. The First-named Respondent was represented by Mr Kenneth Marshall, Principal Solicitor, Dundee Law Centre. The Second-named Respondent was not present or presented, but the Applicants appear to accept that he no longer lives at the Property.
9. Mr Lawson told the Tribunal that the Applicants have a portfolio of properties and have been selling a number of them, partly as they no longer live in the UK, being resident in Dubai. They have a number of business interests in the UK and elsewhere. He confirmed that an attempt to increase the rent had been made , but had not been pursued, as the First-named Respondent could not afford it. He stressed that the Applicants are losing money on the Property every month and that is not sustainable, with no sign of mortgage rates reducing significantly in the next few years. Mr Lawson indicated that the Applicants have about 18 rented properties in Scotland, though they are in the process of selling some of these. He was not aware of their having other letting properties elsewhere in the name of Wingman Ventures Ltd.
10. For the First-named Respondent, Mr Marshall stated that she wants to live long-term in the Property and is content to pay over and above the level of the housing element of her Universal Credit to live in this good area. The Applicants are not completely losing £300 per month, as the capital value of the Property is increasing.
11. In closing remarks, Mr Lawson accepted that the Property is a capital asset, but it can only be realised if they sell it and in order to do that they require vacant possession, because the market for properties with sitting tenants is very limited and purchasers would be restricted to “Buy to Let” mortgage products.
12. The Parties’ representatives left the conference call, and the Tribunal Members considered all the evidence, written and oral, before them.

### **Reasons for Decision**

13. 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.

14. 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 end, 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.
15. The Tribunal was satisfied that the tenancy had reached its end, 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.
16. The Tribunal did not doubt that the Applicants intend to sell the Property. The reason given for it was that there is a shortfall of approximately £300 per month between the rent they are receiving and the mortgage and other payments they are making in respect of the Property. The Tribunal also noted the personal circumstances of the First-named Respondent. She has two children at the local school who are at an important stage of their education, and the Property is very close to her workplace. The Tribunal considered the likely impact on her and her family if they were to be evicted. They would become homeless and would potentially have to be moved to temporary accommodation, which might be in a completely different part of the city, with an inevitable knock-on effect on her travel time to and from work and the costs of that, and the possibility that her children would have to move to a different school in an unfamiliar area or travel a distance to their current school.
17. The impact on the Applicants of the Tribunal refusing the application is, in the view of the Tribunal, significantly less than the potential detrimental effect on the First-named Applicant and her family should an Order for possession be made. They will continue to have a shortfall of rent against outgoings, but it appears to the Tribunal that they are in a reasonable position to bear that ongoing loss on one of a substantial portfolio of rented properties. Had this been their only rented Property, the view of the Tribunal might have been different. They do have the option of selling the Property with a sitting tenant, albeit the price they might achieve would be less than might be obtained on the open market, but they also have the longer-term benefit of increases in the capital value of the Property, realisable when, at some point in the future, it becomes vacant, and the First-named Respondent has indicated a willingness to negotiate some increase in the rent. If, on the other hand, the Tribunal were to make an Order for Possession, the First-named Respondent and her children will become homeless, with all the distress and uncertainty that that would cause to the family.
18. Having carefully considered the written representations and oral evidence and the implications for both Parties of the application being granted or

refused, the Tribunal decided that, in all the circumstances, it would not be reasonable to make an Order for 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.



13 December 2023

Legal Member \_\_\_\_\_ /Chair \_\_\_\_\_ Date