



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 19 of the Housing (Scotland)
Act 1988**

Chamber Ref: FTS/HPC/EV/23/1509

**Re: Property at Flat 1/3, 181 Middleton Street, Glasgow, G83 0DH (“the
Property”)**

Parties:

**Mr James Goodwin, Mr Gregory McCann, 48 Inchconnachan Avenue, Balloch,
Alexandria, G83 8JN; Yaiza, Drymen Road, Balloch, Alexandria, G83 8HT (“the
Applicant”)**

**Ms Eilidh Kerr, Flat 1/3, 181 Middleton Street, Glasgow, G83 0DH (“the
Respondent”)**

Tribunal Members:

Alison Kelly (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for eviction should be granted.**

Background

1. On 11th May 2023 the Applicant lodged an Application with the Tribunal under Rule 66 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondents from the property.
2. Lodged with the application were: -
 - i. Unsigned Copy Short Assured Tenancy Agreement initially running from 2nd February 2017 to 2nd February 2018 and monthly thereafter, and with monthly rent of £465
 - ii. AT5 Notice dated 2nd February 2017;

- iii. Notice to Quit dated 27th January 2023 for 2nd April 2023
 - iv. Section 33 Notice dated 27th January 2023 for 2nd April 2023
 - v. Sheriff Officer's Certificate of Service of 3 and 4
 - vi. Section 11 Notice;
 - vii. Rent Statement
3. The Application was served on the Respondent by Sheriff Officers on 8th September 2023.
 4. On 3rd October 2023 the Applicant's solicitor sent an email to the Tribunal with an up-to-date rent statement.

Case Management Discussion

5. The Case Management Discussion ("CMD") took place by teleconference. The Applicants were represented by Miss Ramzan of Clarity Simplicity Limited. There was no attendance by the Respondent, nor any representative on her behalf.
6. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules..
7. Miss Ramzan sought an order for eviction in terms of sections 19 and 33 of the Housing (Scotland) Act 1988. She said that the tenancy was a short assured tenancy in terms of the Housing (Scotland) Act 1988. Although the copy tenancy agreement lodged was unsigned she asked the Tribunal to accept that it had been signed at the same time as the AT5 Notice which had been produced, dated 2nd February 2017. The tribunal agreed to accept that it had been signed at the same time.
8. Miss Ramzan said that the correct notices had been served, and served on time, and were therefore valid. She submitted that sections 19 and 33 of the 1988 Act had been complied with. The Tribunal agreed.
9. The Tribunal asked Miss Ramzan to address them on reasonableness, which was now necessary.
10. Miss Ramzan said that her clients were looking to sell to alleviate financial hardship. The tenant was in arrears with the rent. The rent was £465 per month, but the mortgage payment had risen to £645 per month. They were not able to increase the rent. The Applicants were having to borrow from family and friends to be able to meet the payments and avoid repossession. One applicant relied on state pension and the other from his income as a barber.
11. The Tribunal asked about the Respondent's circumstances. Miss Ramzan said that to the best of her knowledge the Respondent was single and had a child. She did not know the child's age. She said that the Respondent was in arrears in the amount of £3805, equating to 9 months of rental payments. The

Tribunal noticed that this was a decrease from when the action was raised. Miss Ramzan said that the Respondent had been paying the rent and an amount towards the arrears. She did not know if payments were coming from any type of benefit.

12. The Tribunal adjourned to consider the question of reasonableness. They noted that the rent statement lodged with the Application did not show some payments being made by the Respondent which were shown on the rent statement lodged on 3rd October. It was therefore difficult to gauge the position.

13. The Tribunal reconvened and decided to fix a hearing on reasonableness, in particular in relation to the level of rent arrears, but to hear evidence on all matters pertaining to reasonableness relating to the positions of both the Applicants and the Respondent.

14. No additional documents were lodged prior to the hearing.

Hearing

15. The Hearing took place by teleconference. The Applicants represented themselves. There was no attendance by the Respondent, nor any representative on her behalf.

16. Mr Goodwin spoke for the Applicants. He said that the Respondent had been given notice nearly two years ago, but she had not left. He said that the Applicants had lodged an action at Dumbarton Sheriff Court in December 2022 for payment of rent arrears. The court granted an order on 21st February 2023 for payment of £3664.20, plus expenses of £108 and interest at the rate of eighth per centum per annum. The Tribunal pointed out that the Sheriff Court did not have jurisdiction to deal with a rent arrears case. He said that the Applicants had received advice from a lawyer to raise the action, and the court had granted the order.

17. Mr Goodwin said that the Respondent had missed a few rental payments after that, but began paying again in March 2023, and she paid the sum of £500 per month until August 2023. She then began paying £550 per month, which she had paid from September 2023 until the current month. This meant that the arrears have decreased and are now at £2814.20 (being the sum of £3664.20 less the £850 towards arrears). The sum does not include the interest and expenses in terms of the court decree.

18. Mr Goodwin said that the mortgage payment was now £645 per month, meaning that even after the payment of £550 the applicants were still paying £95 per month from their own funds towards the mortgage.

19. Mr Goodwin said that the property is a two bedroomed flat and the Respondent lives there with two teenage children. They are not aware if anyone else lives in the property. The Respondent is in employment with

West Dumbartonshire Council and she apparently received housing benefit, although that is paid to her direct.

20. Mr McCann said that the property needs substantial repair.

Findings In Fact

- a. The parties entered in to Short Assured Tenancy Agreement initially running from 2nd February 2017 to 2nd February 2018 and monthly thereafter, and with monthly rent of £465
- b. AT5 Notice dated 2nd February 2017 was served prior to the tenancy commencing;
- c. Notice to Quit and Section 33 Notice were served timeously and correctly;
- d. Section 11 Notice was served on the local authority;
- e. The mortgage payments are now £645 per month;
- f. The Applicants are having to meet a shortfall each month in the amount of £95;
- g. The rent arrears have decreased since the application to the Tribunal was made;
- h. The Respondent lives at the property with two teenaged children;
- i. The respondent is in employment.

Reasons For Decision

21. The Tribunal were satisfied that the ground of eviction was established.

22. Section 44 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022 states:

Assured tenancies: discretionary eviction grounds

(1) The Housing (Scotland) Act 1988 is modified as follows.

(2) In section 18 (orders for possession)—

(a) subsections (3) and (3A) are repealed,

(b) in subsection (4), for “Part II” substitute “Part I or II”,

(c) in subsection (6)(a), the words “or Ground 8” are repealed,

(d) in subsection (8), for “subsections (3A) and (4A)” substitute “subsection (4A)”.

(3) In section 19 (notice of proceedings for possession), subsection (5) is repealed.

(4) In section 20 (extended discretion of First-tier Tribunal in possession claims)—

(a) in subsection (1), for “Subject to subsection (6) below, the” substitute “The”,

(b) subsection (6) is repealed.

(5) In section 33(1) (recovery of possession on termination of a short assured tenancy)—

(a) in the opening words, for “shall” substitute “may”,

(b) after paragraph (b), the word “and” is repealed,

(c) after paragraph (d) insert “, and

“(e) that it is reasonable to make an order for possession.”.

(6) In schedule 5 (grounds for possession of houses let on assured tenancies)—

(a) in Part I, Ground 8 is repealed,

(b) the heading of Part I becomes “Certain grounds on which First-tier Tribunal may order possession”,


(c) the heading of Part II becomes “Further grounds on which First-tier Tribunal may order possession”.

23. The Tribunal now has to decide if it is reasonable to grant the eviction order.

The Tribunal therefore had to exercise its discretion in applying the facts to decide if it is reasonable to grant the order. The Tribunal found both Applicants to be credible. The Tribunal accepted that the mortgage payment is now higher than the rent, and that this is not sustainable for the Applicants. Although the Respondent has reduced the rent arrears she has not engaged with the Tribunal process. The Tribunal considered in those circumstances that it was reasonable to grant the order.

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

Date

