



**Statement of Decision 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/23/1914**

**Re: Property at Flat 0/2, 574 Paisley Road West, Glasgow, G51 1RF (“the Property”)**

**Parties:**

**Mr Atif Ahmed, 7 Parkholm Quadrant, Glasgow, G53 7ZH (“the Applicant”)**

**Mr Ashiq Hussain, Flat 0/2, 574 Paisley Road West, Glasgow, G51 1RF (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Mrs E Dickson (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) decided to grant an order for possession in favour of the Applicant.**

**Background**

1. This is a Rule 66 application received in the period between 12<sup>th</sup> June and 17<sup>th</sup> July 2023. The Applicant is seeking an order for possession of the Property. The Applicant lodged a copy of the short assured tenancy agreement between the parties that commenced on 1<sup>st</sup> August 2017 until 1<sup>st</sup> February 2018 and monthly thereafter, copy Notice to Quit and section 33 notice together with evidence of posting and delivery, copy section 11 notice with evidence of service, and Form AT5.
2. Notification of the application and forthcoming Case Management Discussion was served personally on the Respondent by Sheriff Officers on 12<sup>th</sup> September 2023.
3. A Case Management Discussion took place by telephone conference on 17<sup>th</sup> October 2023. The Applicant was in attendance. The Applicant’s representative, Mr Baig, was also in attendance. The Respondent was not in attendance and was not represented. No representations has been received from the Respondent. The Tribunal granted an order for eviction. A decision dated 17<sup>th</sup> October 2023 was issued to the parties.

4. By email dated 31<sup>st</sup> October 2023, the Respondent's representative lodged an application for recall of the decision on the basis that it was unreasonable to grant the order.
5. The Tribunal decided to grant the application for recall, and issued a decision to that effect dated 20<sup>th</sup> November 2023. The application was set down for a hearing on reasonableness. Parties were informed that all documents to be relied upon at the hearing must be lodged no later than 14 days before the hearing.
6. A hearing was set down for 17<sup>th</sup> April 2024 to take place by telephone conference.
7. By email dated 16<sup>th</sup> April 2024, the Applicant lodged representations and productions. The productions comprised three letters from the Applicant's mortgage provider and a survey report.
8. By email dated 16<sup>th</sup> April 2024, which email was provided to Tribunal members shortly before the hearing on 17<sup>th</sup> April 2024, the Respondent representative requested a postponement of the hearing due to the late lodging of the documents by the Applicant.

### **The Hearing**

9. A hearing took place by telephone conference on 17<sup>th</sup> April 2024. Both parties were in attendance. The Respondent was represented by Mr Manish Upadhyay, Solicitor.

### **Preliminary Matters**

#### **(i) Late lodging of documents by the Applicant**

10. Responding to questions from the Tribunal, the Applicant said the documents were lodged late because he had provided them by email to his representative on 26<sup>th</sup> March 2024, so they could be lodged in accordance with the Tribunal's request of 20<sup>th</sup> November 2023 and had only recently discovered that they had not been lodged by the representative, who said the email with the attached documents had gone into his spam folder. The Applicant referred to the date on his written representations, which was 26<sup>th</sup> March 2024.

#### **(ii) Request for postponement by the Respondent**

11. Mr Upadhyay moved the Tribunal to adjourn the hearing. He had received the documents the previous afternoon and had not had an opportunity to discuss them with the Respondent or take instructions. He suggested an adjournment of about 2 weeks, and the Tribunal explained that another date for a hearing was unlikely to be rescheduled until August or September.

12. The Applicant opposed the motion to adjourn, stating that the process had been going on since notices were served in 2022. The documents were not lengthy and could be assessed quickly by the Respondent and his representative.
13. Mr Upadhyay said the Respondent may not understand the documents. The Respondent may wish to challenge the survey which reported on communal issues that required repair, by contacting the engineer who carried out the survey.
14. The Applicant indicated he would withdraw the survey report. He said he provided the additional information in response to the Respondent's submissions in the recall application. Responding to questions from the Tribunal, Mr Upadhyay said, if the Tribunal was minded to continue with the hearing, a short adjournment would be appreciated to allow him to discuss the documentation with the Respondent and take instructions.
15. The Tribunal adjourned to consider the adjournment request. The Tribunal decided not to adjourn the hearing. The Tribunal considered a reasonable excuse had been given by the Applicant for the late lodging of the documentation, which was not due to a fault on his part. The Tribunal considered that the information provided in the three pages of mortgage correspondence was information that was already before the Respondent, as it had been stated orally at the CMD and included within the Tribunal's decision of 17<sup>th</sup> October 2023. The Tribunal considered it would be appropriate to allow time for the Respondent and his representative to consider the three pages of mortgage documentation by taking a further adjournment.
16. On reconvening, the Tribunal explained its decision to the parties. The Tribunal outlined the procedure to be followed at the hearing, including explaining to the Applicant that he would be entitled to cross-examine the Respondent, should he so wish. At this point, Mr Upadhyay said the Respondent had just informed him that he may require the assistance of an interpreter if cross-examination was to take place. The Respondent anticipated he would have difficulty understanding questions over the telephone. The Applicant indicated he would not intend to cross-examine the Respondent.
17. The Tribunal took an adjournment to allow the Respondent and his representative to consider the Applicant's productions. The Tribunal considered the matter of whether an interpreter was required. The Tribunal noted that the Respondent appeared to have understood what had been said about cross-examination by the Tribunal as he had responded to his representative and managed to convey his concerns immediately as the comment was made by the Tribunal. The Tribunal noted that the concern had only been raised in respect of cross-examination, and the Applicant had indicated he did not intend to cross-examine the Respondent. The Tribunal considered it would be appropriate to commence with the hearing, allowing

adjournments as required, and reconsidering the matter of an interpreter if it became necessary. Upon reconvening, Mr Upadhyay said he and the Respondent had discussed the productions.

### **The Applicant's evidence**

18. The Applicant said parties entered into a short-assured tenancy in July 2017. The Respondent had been a fantastic tenant who always paid his rent on time, and there had never been rent arrears.
19. The Applicant said he had served the notice to quit and section 33 notice and the contractual tenancy had come to an end. He wishes to sell the Property, which he no longer needs. He wants to sell it to purchase a property for himself. At present, he lives in a rented property with his brother and his family. The Applicant's father stays in the rented property when he is in the country. The Applicant said he bought the Property as his own home. It is subject to a residential mortgage. He has the lender's permission to let the Property. This has added further interest to the monthly mortgage repayments, which have risen from around £300 at the start of the tenancy to an expected sum of £765.50. The Applicant also pays insurance and factoring fees, taking his outlay to around £800 plus repairs. The monthly rent is £500, so the Applicant is subsidising the mortgage payments each month.
20. The Applicant said he had given the Respondent more notice than was necessary. He was happy to assist the Respondent. It was his position that the Respondent was using delaying tactics to avoid leaving the Property. The Applicant said he would wish to sell the Property in the summer as that is a better time for selling.
21. Responding to questions from the Tribunal, the Applicant said he has two other properties which he lets. They are both in Govanhill, which is not a good area for selling. Both properties have buy-to-let mortgages. This is the only property he owns with a residential mortgage. He sold two other properties two or three years ago to build up his savings.
22. Mr Upadhyay asked a question in cross-examination as to whether the Applicant recognised an address in Glasgow. The Applicant said he did not recognise the address. There was no further cross-examination.
23. The Tribunal allowed an adjournment for the Respondent and his representative to discuss matters before commencing with the Respondent's evidence.

### **The Respondent's evidence**

24. In examination-in-chief, the Respondent said he had open heart surgery in 2014. He now has a diabetes problem. He requires ground floor accommodation with 3 bedrooms. He is in receipt of working and child tax

credits, child benefit, Scottish child payment, state pension and adult disability allowance.

25. The Respondent has two children at Bellahouston Academy. His daughter is in S5, and his son is in S3. His daughter will be taking her exams in May 2024.
26. The Respondent said he has applied online to different housing associations in an attempt to secure social housing. He was designated band B, but he is now band C.
27. Responding to questions from the Tribunal as to whether discussions had taken place with the homelessness team at the local authority, the Respondent said he is not considered homeless as he still has a home. Asked what advice he had been given by the local authority as to what would happen if an order was granted, the Respondent said he had been told he would be sent to a detention centre. He said he would be uncomfortable in a detention centre as there would be too many people there, and his children would be disrupted.
28. Asked whether he had been told he would get temporary accommodation, such as a scatter flat, the Respondent said no, and that only a detention centre had been mentioned. Asked if he had anything in writing, the Respondent said no, and that all discussion had taken place by telephone. His daughter had contacted Wheatley Housing Corporation and she had been told the same thing. The Respondent said he had provided medical evidence to the housing providers. Asked whether he had shown the previous decision of the Tribunal to grant an order for possession to the local authority, the Respondent said he had done so. Responding to questions from the Tribunal as to his wife's health, the Respondent said she has digestive problems requiring a special diet.
29. Mr Upadhyay clarified that the Respondent would not be sent to a detention centre, and that it was likely he meant a hostel or temporary accommodation.
30. Responding to questions from the Tribunal, the Respondent said he works two three-hour shifts, five days a week, as a cleaner with the local authority. The Respondent said he had not been offered and refused any social housing. The Respondent said he had not taken advice from a housing agency, but his Social Worker had been involved in trying to help him.

### **Submissions by the Applicant**

31. The Applicant referred to his previous submissions and evidence and said he requires to sell the Property in order to purchase housing for himself.

### **Submissions on behalf of the Respondent**

32. Mr Upadhyay said it would not be reasonable to evict the Respondent as this will have a serious impact upon his personal and family life. The Respondent has been applying for housing and has not been offered social housing. He has been trying hard to get a ground-floor three-bedroomed property close to the children's school. He is in receipt of benefits including adult disability payment. He requires a ground floor property. His daughter is at a critical juncture in her education. Any disturbance would affect her studies.
33. The Applicant is a business man. He has made a good profit on the Property for 5 or 6 years. Making a loss is part of being in business. He has not tried to market the Property with a sitting tenant. He has other properties that he could sell to secure a deposit to buy a property.
34. The Respondent understands he does not own the Property and he would be happy to leave if he found the right property. He has been a model tenant.

### **Further submissions by the Applicant**

35. Responding to questions from the Tribunal, the Applicant said he had taken advice on selling with a sitting tenant but had been told he would not get a good enough price for the property. Asked why he had not increased the rent for the Property since 2017, the Applicant said he was being nice to the Respondent, and then rent increases were restricted during the pandemic.
36. The Applicant said the Property is the only one where the mortgage interest rate is not fixed. He would incur penalties if he sold one of the other properties.

### **Date of execution of an order for possession – submissions**

37. Responding to questions from the Tribunal as to whether the date of execution of an order for possession, if granted, should be extended until after the Respondent's daughter had taken her exams, the Applicant said he would be happy to extend the period until the end of June or mid-July. He said he is willing to work with the Respondent and support him in any way possible.
38. Mr Upadhyay said the Respondent cannot consent to an order for possession, but if the Tribunal was minded to grant the order, he would request that execution be delayed until the end of July.

### **Findings in Fact and Law**

- 39.
- (i) The Applicant is the heritable proprietor of the Property, which is situated on the ground floor.

- (ii) The Applicant lived in the Property until 2014, and has let the Property thereafter.
- (iii) Parties entered into a short assured tenancy agreement in respect of the Property that commenced on 1<sup>st</sup> August 2017 until 1<sup>st</sup> February 2018, and monthly thereafter.
- (iv) Notice to Quit and Section 33 Notice were served on the Respondent.
- (v) The short assured tenancy has reached its ish date.
- (vi) The contractual tenancy terminated on 1<sup>st</sup> October 2022.
- (vii) Tacit relocation is not in operation.
- (viii) The Applicant has given the Respondent notice that they require possession of the Property.
- (ix) The Applicant lives with extended family in rented accommodation.
- (x) The Applicant intends to sell the Property in order to purchase a residential property in which to live.
- (xi) The monthly rent paid does not cover the Property costs, and the Applicant is required to pay out an additional sum each month in mortgage costs, management fees, insurance, and factoring fees.
- (xii) The Applicant owns and lets two properties in Govanhill, which are subject to fixed rate mortgages.
- (xiii) The Property is situated in an area with better sale prospects than the Govanhill properties.
- (xiv) The Applicant is likely to achieve a better price for the Property with vacant possession than with a sitting tenant.
- (xv) The Respondent lives in the property with his wife and 2 children.
- (xvi) The Respondent's health issues require him to live in a ground floor property.
- (xvii) The Respondent's daughter's wellbeing is likely to be negatively affected if an order for possession is executed before or during her school examinations.
- (xviii) The Respondent is employed for thirty hours weekly as a cleaner.
- (xix) It is reasonable to grant the order for possession.

- (xx) It is reasonable to delay execution of the order for possession until the end of July 2024.

### **Reasons for Decision**

40. Section 33 of the Act provides that the Tribunal may make an order for possession if satisfied that the short assured tenancy has reached its finish, tacit relocation is not operating, the landlord has given notice to the tenant that they require possession, and it is reasonable to make the order.
41. The contractual tenancy has been terminated and tacit relocation is not in operation. The Applicant has given the Respondent notice that they require possession of the Property.
42. In considering reasonableness, the Tribunal took into account the circumstances of both parties as set out in their written representations and their evidence.
43. The Tribunal was satisfied that the Applicant is in a difficult position financially, given the increase in the monthly mortgage payments for the Property, and the fact that the rent does not cover the mortgage payments, factoring fees, management fees and insurance. The Tribunal took into account that the Applicant is having to pay a sum in excess of £300 each month out of his pocket in respect of the Property.
44. The Tribunal took into account the submissions made by the Respondent representative that the Applicant is a businessman with other properties to let, and that losses are not uncommon in business. However, there was no evidence before the Tribunal as to whether the other properties are profitable, and no cross-examination in that regard was made of the Applicant. It is within the knowledge of the Tribunal that the Property is in a better area than the two other properties which the Applicant owns. The Tribunal accepted the Applicant's evidence that the Property has better prospects for sale. The Tribunal accepted the Applicant's evidence that the sale proceeds were likely to be less if the Property was offered for sale with a sitting tenant.
45. The Tribunal noted that the Respondent has been a long-standing and good tenant. The Tribunal was satisfied that the Respondent has health issues which require him to live in a ground-floor property. The Tribunal was satisfied that the Respondent's daughter's wellbeing is likely to be affected if an order for possession is granted and executed before or during her school examinations.
46. In considering the effect of an order for possession upon the Respondent and his family, the Tribunal considered whether there was likely to be any significant detrimental effect of granting an order on the Respondent or his wife, particularly in respect of their health. There was no evidence put before the Tribunal in this regard. The Tribunal noted that the Respondent is in



receipt of a disability benefit; however, he is working 30 hours each week in a job that must incur some physical effort. The Respondent did not give evidence that his shifts were split because of his physical health, although this was stated by his representative during submissions. The Tribunal considered it unlikely, even taking the Respondent's medical issues into account, on the evidence before it, that granting an order for possession would have a significant detrimental effect on the health of the Respondent or his wife.

47. It is within the knowledge of the Tribunal that social housing is in short supply, and can be difficult to obtain, however, the local authority has a duty to house families facing homelessness. It is within the knowledge of the Tribunal that an order for possession ensures that a family is treated as homeless and prioritised for social housing, which may include housing families in temporary accommodation for a time, until a suitable property is found. This would not include the use of a detention centre for the family.
48. It was said on behalf of the Respondent that he is seeking accommodation close to the children's school. The Tribunal accepted that this would be the ideal situation for the family, but no evidence was led as to any vulnerabilities on the part of the children that would cause hardship by having to travel from elsewhere in the area or from another area of Glasgow to their current school. The Tribunal noted that the Respondent's recall application stated that removing the children from their house at this stage could affect their education, but no evidence was led of any likely detrimental effect upon the children's education of granting an order other than before or during the Respondent's daughter's examinations. The Tribunal was not persuaded that granting an order would necessarily affect the children's education, particularly if the date of execution of the order was delayed until after the end of the school term.
49. The Tribunal considered that the effects upon the Applicant of not granting an order would be significant. The Tribunal considered it would not be reasonable to expect the Applicant to continue making such a significant loss on the Property each month. The Tribunal considered it likely that the Respondent and his family will be housed in suitable accommodation in due course if an order for possession is granted.
50. In all the circumstances, having weighed the competing factors and balanced the rights and interests of both parties, the Tribunal considered it reasonable to grant the order.
51. The Tribunal considered it reasonable to delay execution of the order to the end of July 2024, to allow the Respondent's daughter to complete her examinations, to avoid disruption for the children during term time, and to provide the family with more time to secure suitable social housing.

## **Decision**

52. An order for possession of the Property is granted under section 33 of the Housing (Scotland) Act 1988. The order is not to be executed prior to 12 noon on 31<sup>st</sup> July 2024.

## **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.**

# H. Forbes

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Legal Member/Chair

17<sup>th</sup> April 2024  
Date