



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”) and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/EV/23/2899

Re: Property at 30 Brodie Park Ave, Paisley, PA2 6JA (“the Property”)

Parties:

Mrs Susan McCamley, Mrs Sheila McCamley, 7C Dougal Avenue, Glasgow, G66 4NT; 11 Barmill Road, Beith, KA15 1EU (“the Applicant”)

Mr David Roy, 30 Brodie Park Ave, Paisley, PA2 6JA (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

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

Background

1. The application submitted on 23 August 2023 sought an eviction order against the Respondent on the ground of termination of a Short Assured Tenancy between the parties which had commenced on 1 December 2012. Supporting documentation was lodged with the application, including a copy of the tenancy agreement, the AT5, Notice to Quit, Section 33 Notice, Section 11 Notice to the local authority and proofs of service of said notices.
2. Following initial procedure, a Notice of Acceptance was subsequently issued on 6 October 2023 in respect of the application and notification of the application served on the Respondent by Sheriff Officer on 17 November 2023. Details of the Case Management Discussion (“CMD”) were also notified to parties.

3. Detailed written representations and other documentation was lodged by both parties in advance of the CMD.
4. The Case Management Discussion (“CMD”) took place by telephone conference call on 12 January 2024 at 2pm. Both Mr Robert Downie and Mr Craig Watson of LM Properties Ltd, the Applicant’s letting agents, attended on behalf of the Applicant. Mr David Roy, the Respondent also attended.
5. Mr Roy was opposed to the application. He accepted that the tenancy was a short assured tenancy and had no issues with the more technical aspects of the eviction application, such as the notices served and the period of notice he was given but wished to oppose the application on the basis of reasonableness. He explained his position in relation to reasonableness. Mr Downie refuted some of what Mr Roy had said and also explained the Applicant’s position on reasonableness, including the reasons for them wishing to recover possession of the Property.
6. Given that the application was opposed by the Respondent and that there were various issues in dispute, the outcome of the CMD was that the application was adjourned to an Evidential Hearing on the issue of reasonableness in order that evidence could be presented to the Tribunal by both parties. There had been some discussion at the CMD about a possible resolution of matters between the parties. The Tribunal requested to be informed if agreement between the parties was reached meantime, in order that the application could be dealt with administratively, in terms of Rule 18 of the Regulations (*power to determine the proceedings without a hearing*), and any Evidential Hearing cancelled in advance.
7. Following the CMD, the Tribunal issued a Note detailing the discussions at the CMD dated 12 January 2024, together with a Direction to parties, requiring both parties to provide details of any witnesses that they wished to call to give evidence at the Evidential Hearing and to lodge any further documents upon which they wished to rely in advance of the Evidential Hearing. The Evidential Hearing was subsequently fixed to take place on 29 April 2024 at Glasgow Tribunals Centre ‘in-person’ (at the request of the Respondent due to issues with his hearing which he had intimated to the Tribunal prior to the CMD).
8. In advance of the Evidential Hearing, written submissions, including a chronology of events, and an Inventory of Documents were lodged on behalf of the Applicant. Nothing further was lodged by the Respondent.
9. Written representations were also lodged on behalf of the Applicant, updating the Tribunal on the issue of the proposed agreement between the parties which had been discussed at the CMD. Copies of communications between the parties on this matter were attached to the Applicant’s representations. It appeared from representations emailed to the Tribunal on 4 April 2024, that agreement had been reached and that the Applicant was anticipating the

Respondent emailing the Tribunal separately to confirm the position. However, there was subsequently no contact with the Tribunal from the Respondent. On 26 April 2024, by email, the Tribunal accordingly requested a response from the Respondent confirming his position. No response was received.

Evidential Hearing

10. An Evidential Hearing took place at Glasgow Tribunals Centre, Room 112, on 29 April 2024 at 10am. The Respondent, Mr David Roy, had telephoned the Tribunal Administration earlier in the morning to advise that he was feeling unwell but would be attending, although may be late. However, Mr Roy arrived in time and was in attendance. Also in attendance were the Applicant's representatives, Mr Robert Downie, Office Manager, and Mr Craig Watson, Lettings Manager, of LM Properties Ltd, the Applicant's letting agents. Both confirmed that they would be giving evidence, if required.

Preliminary Issues

11. Following introductions and introductory comments by the Legal Member, Mr Roy was asked to confirm his position in relation to the Tribunal application. It was explained that the Tribunal was aware from the recent communications lodged on behalf of the Applicant that there had been discussions between the parties about a possible resolution whereby Mr Roy would not contest a 'no fault' eviction order being granted on the basis of the Short Assured Tenancy having been brought to an end by service of the appropriate formal notices and would move out of the Property by an agreed date, in return for which the Applicant would waive the rent arrears which have accrued. Mr Roy stated that this proposed agreement had fallen through as he does not trust the Applicant's letting agents. He had been dealing with their Ms McMinn, one of the Directors, who had assured him everything would be dealt with transparently and he would be copied into all the letting agents' communications with the Tribunal. However, he then had sight of an email from the letting agents to the Tribunal which he had not been copied into. He also objected to the letting agent being provided with what he regarded as legal advice by the Tribunal Administration as he has repeatedly been told that he could not be given legal advice by the Tribunal. Mr Downie explained that there had been no intention to mislead or hide anything from Mr Roy and that they had simply been updating the Tribunal on their communications with Mr Roy about a possible resolution, as they had been requested to do. He confirmed that they had sought guidance from the Tribunal about the procedural aspects of what they were trying to do. The Legal Member confirmed that both parties had been advised that the Tribunal could not provide parties with legal advice, but explained the distinction between legal advice and practical advice regarding Tribunal procedure.
12. Mr Roy also stated that he wished to take issue with the contents of the CMD Note which he did not think were accurate. He wanted an amended CMD Note issued as he was concerned that the CMD Note formed part of the process and that other Tribunal Members dealing with the case would have the wrong

impression of what had been said at the CMD. The Legal Member confirmed the purpose of the CMD and the CMD Note and explained that the Note is not a "decision" of the Tribunal which is published on the Tribunal website and can be appealed. It is issued only to the parties and is for internal use only, as stated on the Note. Both Tribunal Members confirmed to Mr Roy that they are the same Members who dealt with the CMD and that both had approved its contents before it was issued. The Legal Member confirmed, however, that she would note, for the record, that Mr Roy disagreed with some of the contents of the CMD Note.

13. It was noted that Mr Roy wished to raise again some of the procedural issues that he had raised at the outset of the CMD, such as the Tribunal's decision not to hold the CMD in-person, despite him having intimated in advance his hearing difficulties and concerning his issues with the Tribunal Administration, his communications with them and the circulation of documentation prior to the CMD. The Legal Member advised that the Tribunal was not prepared to debate these issues further as they had been dealt with at the CMD and had no bearing on the Evidential Hearing.
14. Mr Roy stated that he was concerned that the Legal Member was not following "due process", that there was no recording or transcript taken of Tribunal hearings and witnesses are not put on oath. He indicated that he accordingly intended to appeal any decision made by the Tribunal. He stated that he wished to complain and was advised how to do this [the Tribunal Clerk subsequently provided Mr Roy with details of the Tribunal website and the information contained therein regarding making complaints about the Tribunal Administration or Tribunal Members].
15. The Tribunal indicated that they now intended to proceed with the Evidential Hearing and Mr Roy was again asked to clarify his position regarding the application and, in particular, if he was still wishing to oppose it on the basis of reasonableness. Mr Roy was not particularly clear on this. He stated that he did wish to move out of the Property and was partially packed. However, he is unable to do so by the date which had been proposed of 1 May 2024 due to his health and mobility problems. On the other hand, Mr Roy maintained that he considers the Applicant's letting agents have harassed him and are behind the decision of the Applicant to evict him from the Property. The Tribunal considered from Mr Roy's comments that he was still wishing to oppose the application on reasonableness and that the Evidential Hearing should accordingly proceed.
16. Mr Roy then indicated that he was not feeling well enough to proceed. He stated that he had been experiencing sickness and diarrhoea for four days and is taking medication. He was asked why he had not notified the Tribunal in advance, requested a postponement or submitted medical evidence in support of a postponement. He said that he had been in bed all weekend and that there was no point emailing the Tribunal as it takes so long for communications to be circulated. It was noted by the Tribunal that Mr Roy had telephoned the Tribunal

Administration earlier this morning to advise that he may be late arriving but that he had not requested a postponement and had not raised the issue until now, by which time the hearing was well underway. Mr Roy was asked if he wished a brief adjournment to consider his position. At this point, Mr Roy left the room quickly, indicating that he was feeling sick and the Tribunal adjourned.

17. During the adjournment, the Tribunal Members discussed the matter and considered whether to postpone the Evidential Hearing if Mr Roy requested this. They considered the terms of Rule 28 of the Regulations (*adjournment or postponement of a hearing*), together with the Tribunal's overriding objective to deal with proceedings justly.
18. On re-convening, Mr Roy appeared to be feeling better and the Legal Member indicated that the Tribunal Members had discussed matters and proposed to proceed as they did not consider that cause had been shown for a postponement and that the Tribunal required to take into account the interests of both parties and seek to avoid delay. Mr Roy was advised, however, to indicate if he felt unwell again or required a break at any time. He did not do so.
19. The Tribunal proceeded to hear evidence from the parties who were given an opportunity to ask each other questions, as well as answering questions from the Tribunal Members.

Mr Robert Downie

20. Mr Robert Downie is the Office Manager of LM Properties Ltd, the Applicant's Letting Agents. He confirmed that the Applicant had always intended to sell the Property at some point. He referred to the email from Mr Gerard Higgins, the husband of one of the Applicants, which is lodged with the Tribunal explaining their personal circumstances and decision to sell. They are sisters, one of whom is recently retired and the other is about to retire. They need to sell for financial reasons. They had originally inherited the Property themselves. They let the Property to Mr Roy for more than ten years and had instructed LM Properties to serve notice on Mr Roy but to give him a longer notice period than was required so that he had additional time to find alternative accommodation. However, Mr Roy did not move out by 1 May 2023 and stopped paying his rent when notice was served. The rent was £400 per month and the rent was stopped as of 1 February 2023. The rent arrears are now substantial amounting to £6,000 which will increase to £6,400 as of 1 May 2024. This has increased the financial pressures on the Applicant who now needs vacant possession. It is accepted that there were issues with the boiler immediately following its installation in November 2022 and that it took too long for this to be sorted out. Mr Downie confirmed what Mr Roy had said earlier that the boiler issues were finally resolved three or four weeks ago. However, LM Properties deny Mr Roy's allegation that there was any plan not to fix the boiler to harass him into leaving the Property. A heating engineer did attend after the installation of the boiler to try and fix the issues. However, Mr Roy stopped allowing further access in March 2023. It was only after the CMD in January when Mr Roy had agreed to allow access again, that it could be arranged for an engineer to attend. This is

the reason the boiler issues were only resolved recently. Mr Downie said that the boiler issues were not grounds for Mr Roy stopping paying the rent. The boiler still worked and Mr Roy had hot water and heating. The issue was a drop in pressure in the system, due to a leak in the sealing, which Mr Roy was able to top up himself. Mr Roy did not contact LM Properties about his intention to stop paying the rent. They just noticed that he had stopped paying into the account. It was frustrating because he then stopped access which prevented them being able to get the boiler fixed. Mr Downie pointed out that, although the boiler issue is now fixed, Mr Roy has not resumed any rental payments. Mr Downie confirmed that no formal action has been initiated for payment of the rent arrears owing by Mr Roy. The Applicants really need vacant possession and instructed LM Properties that they were willing to 'wipe off' the rent arrears to try and reach agreement with Mr Roy about him agreeing to the eviction order being granted and moving out voluntarily. Mr Downie does not know what their intention will be now regarding the rent arrears as Mr Roy pulled out of the proposed agreement. Mr Downie confirmed that the Applicants have no other rental properties and that there is no mortgage outstanding on the Property. They need to sell the Property to recover the capital to help fund their retirements. The continuing situation and the Tribunal process is affecting them badly. Mr Downie made reference to the more recent email lodged with the Tribunal from Mr Gerard Higgins on behalf of the Applicants explaining this and providing an update on their circumstances. As to the timing of notice being served on Mr Roy in January 2023, Mr Downie stated that it was just a coincidence that this was very soon after the boiler installation and issues arising. He denied that there was any other motive for the Applicant wanting to recover possession from Mr Roy. Mr Downie referred to the emails lodged recently from the Applicant to LM Properties which were sent at the time and showed how bad they felt about having to ask Mr Roy to leave and this was why they had wanted to give him a longer notice period than they had to. Mr Downie confirmed that, although their relationship with Mr Roy has now mostly broken down, they had had a good relationship with him beforehand and there had been no issues with Mr Roy as a tenant. There was one or two instances where Mr Roy was late with his rent but this was resolved and there were no rent arrears on his account when Mr Roy stopped paying his rent.

Mr David Roy (Respondent)

21. Mr Roy stated that he had no idea that notice was going to be served and it came as a shock to him. Ms McMinn of LM Properties had emailed him and said that he would be given extra time to find alternative accommodation. Mr Roy said that he wanted his thanks passed on to his landlords and was pleased that they had provided him with a good tenancy reference. Things were initially amicable and there were discussions about the property report being carried out, etc. However, this changed due to the problems with the boiler not being resolved. The new boiler had been installed on 18 November 2022 and within three days issues had arisen. He explained that he had been asking to see a Gas Safety Certificate but had been told there was no point getting one until the new boiler was installed. He emailed three times asking to see the Gas Safety Certificate after the installation as he knew he had a right to see the Gas Safety

Certificate. He also wanted to see the 'cleanliness report' as there had been a mess left by the installers. It was primarily Mr Craig Watson that Mr Roy dealt with in connection with the boiler side of things. He told Mr Watson that he wanted to see these reports. He telephoned Mr Watson about the reports and said that Mr Watson had threatened him on the telephone, saying something along the lines of 'you don't want to get on the wrong side of me'. Mr Watson had said that the engineer was late getting the Gas Safety Certificate over to him. It was produced eventually to Mr Roy in March 2023 and Mr Roy queried the date of it but was not given an explanation. Mr Roy was not happy with the 'cleanliness report' prepared by Mr Watson, as it suggested that the whole Property was not clean. Mr Roy confirmed that due to these issues and the ongoing problems with the boiler, he became frustrated and stopped allowing access altogether in March 2023. Mr Roy referred to having relevant qualifications and knowledge as an engineer but did not think that the heating engineer or Mr Watson listened to what he was saying about the possible causes of the issue. He confirmed he had also stopped paying rent prior to this and has not made any rent payments since. Mr Roy objects to Mr Downie having suggested that he had previously missed rent twice. Mr Roy explained that there had been one rent payment that was four weeks late but he had explained the reason for this to LM Lettings at the time and made the rent payments up. [Mr Downie interjected and said this was correct].

Mr Craig Watson

22. Mr Craig Watson is the Lettings Manager of LM Properties Ltd, the Applicant's letting agents. He confirmed that it had taken too long for the boiler issues to be resolved and that there was a delay in them receiving the Gas Safety Certificate from the heating engineer. He does not know why the Gas Safety Certificate was dated March 2023 as it was heating engineer who had prepared it. He also confirmed that some mess had been left by the workmen. Mr Watson confirmed that he had inspected the Property and prepared the 'cleanliness report' referred to [Periodic Property Inspection Report]. Mr Watson stated that he had never had issues with Mr Roy previously and just put in the report what he had seen on inspection. Mr Watson confirmed having spoken to Mr Roy on the telephone but denies ever having threatened him. Mr Watson added that he works in an office, surrounded by other members of staff and his employers who can hear what he is saying and that this just would not happen. He would not threaten anyone.
23. Mr Roy asked Mr Watson a number of questions. He asked Mr Watson if he had qualifications as a letting agent; if he had told Ms McMinn that he used to be a gas engineer and/or used to own a gas business; to confirm his address; to confirm if Craig Watson Ltd was his company; whether he used to own a gas business; and whether he previously worked as a labourer. Mr Watson confirmed that he has qualifications from "Let-well" and the Chartered Institute of Housing. He has worked with LM Properties Ltd for five years and started with them as a Lettings Administrator. Mr Watson did not wish to state his home address [and on being asked by Mr Roy, Mr Downie confirmed that he would not provide this either]. Mr Watson queried with the Tribunal the relevance of

these questions to the case. Mr Roy stated that it was relevant to Mr Watson's credibility as a witness. The Legal Member asked Mr Watson to answer the question about him previously being a gas engineer as she considered this may have some relevance, given the gas boiler issues mentioned by Mr Roy. Mr Watson confirmed that he used to be a gas engineer, but that he had also been a fireman previously. He confirmed, however, that he had not been involved in carrying out or certifying the installation of the boiler or the subsequent repairs and these had been carried out by a qualified gas engineer, so still does not see the relevance of these questions. Mr Roy then wished to pursue his questions about whether or not Mr Watson had his own gas business or any involvement in the limited company Mr Roy had mentioned. He said that he had public records in front of him that could be produced. The Legal Member advised Mr Roy that she could not see any further relevance of this line of questioning to the issues under consideration and asked Mr Roy to move on.

Mr David Roy – Respondent

24. Mr Roy then gave further evidence. He stated that Mr Watson's credibility was important as he considers that Mr Watson was feeding mis-information to the landlords and to Ms McMinn about the boiler and held back the Gas Safety Certificate. He considered the actions of Mr Watson and LM Properties Ltd, in relation to the boiler issues and the delays fixing it, to amount to harassment in an attempt to get him to leave the Property on 1 May 2023, when the notice period expired. He thinks that the landlords were put up to serving notice on him and were unknowingly aiding and abetting a criminal offence, namely harassment. Mr Roy stated that he was previously a police officer and intends to pursue both civil and criminal remedies regarding this harassment. Mr Roy explained that the several months' delay in the boiler issues being resolved and the involvement of Mr Watson in this led to his theory that the landlords were being put up to this. This was the reason behind his decisions to stop paying rent and not to allow any further access to the heating engineer or the letting agents from March 2023. He contacted Mr Downie, Mr Watson and Ms McMinn by email and outlined his complaints to them. He also advised them that he was not in a position to move out by 1 May 2023. During this period, Mr Roy explained that he had a number of other issues to deal with, over and above the boiler. There were issues concerning his grandchildren who lived in Falkirk and in connection with his own health. In particular, he had been referred for a biopsy. The situation with the boiler and the letting agents was impacting his health.
25. Mr Roy was asked by the Tribunal Members if he was intending to resume his rental payments of £400 per month now that the boiler issues had been resolved three or four weeks ago and given that he has stated that he is not now intending to vacate the Property by 1 May 2024. Mr Roy stated that he was not intending to resume payments meantime. He confirmed that he had put most of the rent that he had held back aside but not all of it. He explained that his total income comes from pensions and that he has no assets.

26. Mr Roy was asked about his health and medical conditions which had been referred to by Mr Roy. Reference was made to the medical information lodged with the Tribunal by Mr Roy prior to the CMD. He confirmed that he is now 72 years old. He has a back issue dating back to 1994, lower back pain, recurrent groin strains which have required physiotherapy, arthritis and issues with his knees. These issues cause him problems with his mobility which have impacted on his ability to pack up his belongings which he has not been able to complete. Mr Roy explained that he cannot use anti-inflammatories, due to having experienced a stomach bleed in December 2023. He had a platelets problem and heart attack in April 2015 and is on medication for this, which has side effects. He is type-2 diabetic and lost 3 stones in weight. The biopsy he referred to earlier was in connection with a cancer scare which fortunately turned out not to be cancer.
27. Mr Roy confirmed that the Property is a ground floor flat and he has been looking for a property with one or two bedrooms. He would prefer to have a second bedroom as he has a lot of books and other items to store. He was asked if he was still wishing to move to Falkirk as he had stated that previously but he had also mentioned in his evidence today that the family he has living there are going to be moving. He confirmed that he still has a live application with Falkirk Council and spoke to their homeless prevention team around four weeks ago. The contact that he had previously at Falkirk Council who was advising him has moved into a different role. Mr Roy stated that he had raised the issue of his application through a local Falkirk Councillor but there is not much that they do as he is not a constituent there. Mr Roy confirmed he has also contacted some Housing Associations, including Link, and he is on the waiting list there too and saw one of their houses. He does not want another private let due to issues with lack of security of tenure and affordability. He confirmed that he would have to pay at least £300 per month more than his current rental. Mr Roy confirmed that his age and health conditions might make him a higher priority on the waiting list but he understands he would not be top priority. He stated that he was aware that if an eviction order is granted, this may also raise his priority and that this being a 'no-fault' eviction ground, that such an order would not cause him difficulties with his housing applications. Mr Roy reiterated that he does still intend to move out of the Property but he is concerned about the situation with securing alternative accommodation and the timescales involved, given his mobility issues and the problems this is causing him packing up. The Tribunal Members advised Mr Roy of the usual timescale that applies to an eviction order being enforced, which includes the 30 day appeal period and asked if it would make a difference to him if the Tribunal, in the event that they decide to grant an eviction order, were to extend the usual period for enforcement of the order. Mr Roy confirmed that he would like a period of three months, but stressed that it would still be his intention to move out as quickly as possible, within his capacity.
28. Mr Roy reiterated that he had pulled out of the proposed agreement because he had lost trust in LM Properties. He does not believe that his landlords' wish to sell the Property is for financial reasons. He made the point that the landlords had never raised the rent from the original £400 per month and also that over

the ten years of his lease, he has paid them over £50,000 in rent. Mr Roy stated that landlords have repair obligations and that a responsible landlord would have landlord insurance in place to cover unexpected events. Mr Roy stated that the landlords should have known for at least five years, from the annual boiler maintenance reports carried out, that the boiler was going to need to be replaced and should have made a contingency for this. They should also have used the 12-month warranty on the boiler installation to have the issues with the boiler resolved. Mr Roy believes that he was served with notice due to his complaints about the boiler and that Mr Watson was behind this, especially as he had threatened him. Mr Roy was supposed to be getting a meeting with the Director of LM Properties who was dealing with his formal complaints but Mr Watson tried to take over, force him out and Mr Roy's complaints were never resolved.

Summing-up

29. The Tribunal asked the parties if they wished to say anything in summing-up.
30. Mr Downie stated that the Applicants require vacant possession in order to get the Property on the market as soon as possible and asked the Tribunal to grant the eviction order. The Applicants would accept if the Tribunal wished to give Mr Roy a further extension of time, provided that an order is put in place specifying a date for eviction. They would not want any extension to be left to the parties to agree informally, given what happened with the previous proposed settlement agreement.
31. Mr Roy stated that responsible landlords would have had landlord insurance in place or money set aside to deal with major repairs, such as the boiler. He added that the Applicants here had carried out minor repairs during the tenancy fine. If the Tribunal decides to grant an order, he would request the security of a three month extension on the enforcement of the order. Mr Roy confirmed that he would not resume rent payments over any extended period granted but that he would keep the rent securely in his bank account instead until everything is resolved.

Conclusion

32. The Legal Member explained the procedure, that the Tribunal Members would now adjourn to deliberate, make their decision and that a detailed written Decision would be issued to parties as soon as possible. The parties were thanked for their attendance and the Evidential Hearing concluded.

Findings in Fact

1. The Applicant is the joint owner and landlord of the Property.

2. The Respondent is the tenant of the Property by virtue of a Short Assured Tenancy which commenced on 1 December 2012.
3. The tenancy was managed for the Applicant by their letting agents, LM Properties Ltd.
4. The Applicant ended the contractual tenancy by serving a Notice to Quit and Section 33 Notice dated 25 January 2023, specifying the end of the notice period as 1 May 2023, an ish date in terms of the tenancy. Both notices were in the correct form, provided sufficient notice (in excess of the two months required) and were served validly on the Respondent by post.
5. The Respondent has remained in possession of the Property following expiry of the notice period.
6. The application was lodged with the Tribunal on 23 August 2023, following expiry of the notice period on 1 May 2023.
7. The Respondent opposed the application on the basis of reasonableness only.
8. The Applicant are two sisters who inherited the Property in 2011.
9. The Applicant intends to sell the Property for financial reasons, namely to release the capital to help fund their retirements.
10. The Respondent was informed of the reasons for the Applicant wishing to recover vacant possession and sell the Property when notice was being served.
11. The Respondent was informed that the Applicant had instructed that he be given a longer notice period than was required by law.
12. The Respondent was provided with a good tenancy reference from the Applicant's letting agents when notice was served.
13. The letting agents offered to assist the Respondent in finding alternative private let accommodation and informed him that they would be happy to let to him again.
14. The Applicant had previously offered to sell the Property to the Respondent but he had declined as it was not financially viable to him.
15. A new gas boiler was installed in the Property on or around 18 November 2022.
16. Issues with the operation of the boiler arose within days of its installation and were reported by the Respondent to the letting agents.

17. The Respondent also had issues with the mess left by the installers of the boiler and also reported this to the letting agents.
18. The Respondent repeatedly requested a copy of the Gas Safety Certificate following installation of the boiler.
19. The letting agents provided the Respondent with a copy of the Gas Safety Certificate dated 13 December 2022 in or around March 2023, the date of which the Respondent considered to be incorrect.
20. The letting agents' Lettings Manager inspected the Property on 29 November 2022 and prepared a Periodic Property Inspection Report dated 1 December 2022, a copy of which was provided to the Respondent in or around March 2023.
21. A heating engineer instructed by the letting agents attended at the Property several times to try and rectify the issues with the boiler but they were not resolved.
22. The Respondent has qualifications in Mechanical Engineering and other work experience and knowledge which he considered very relevant to the boiler issues.
23. There were differences of opinion between the Respondent and the heating engineer as to the cause(s) of the boiler issues.
24. In or around March 2023, the Respondent informed the letting agents that he was not allowing any further access to the Property to the heating engineer.
25. The rent in respect of the tenancy was £400 per calendar month.
26. The Respondent stopped paying rent as at 1 February 2023, citing the ongoing boiler issues.
27. The Respondent has not paid any rent since.
28. At the Case Management Discussion on 12 January 2024, the Respondent agreed to allow further access to a heating engineer.
29. The boiler issues were finally resolved in or around the start of April 2024.
30. The rent arrears at the date of the Evidential Hearing amounted to £6,000.
31. The Respondent intends not to resume rental payments to the Applicant but to hold back the monies securely himself.

32. The Respondent states that he has put aside some of the rent monies that were already withheld.
33. Relations between the Respondent and the letting agents were good throughout the tenancy but deteriorated throughout 2023 and have now broken down completely.
34. The Respondent is 72 years old and has a number of health conditions, some of which cause him mobility problems.
35. The Property is a ground-floor flat with two bedrooms.
36. The Respondent lives at the Property alone but has a volume of personal belongings.
37. The Respondent has family currently living in the Falkirk area and has applied to Falkirk Council for housing.
38. The Respondent has sought assistance from the homeless prevention section at Falkirk Council whom he has made aware of his current circumstances and health conditions.
39. The Respondent is also on housing association waiting lists and has viewed one of their properties.
40. The Respondent is not able to afford a suitable alternative private let, due to his limited income and the current rental costs of private lets.
41. The Respondent intends to move out of the Property but seeks more time to secure alternative accommodation and remove.

Reasons for Decision

1. Section 33(1) of the Act states that an order for possession shall be granted by the Tribunal if satisfied that the short assured tenancy has reached its finish; that tacit relocation is not operating; that the landlord has given to the tenant notice stating that he requires possession of the house; and that it is reasonable to make an order for possession. The Tribunal was satisfied that all requirements of Section 33(1) had been met.
2. The Tribunal was satisfied that the service of the Notice to Quit and Section 33 Notice in terms of the 1988 Act had been properly and timeously carried out by the Applicant prior to the lodging of the Tribunal application. The Respondent took no issue with these aspects of the application.
3. As to reasonableness, the Tribunal considered the very detailed written representations and submissions of both parties which had been lodged in

advance, together with the oral submissions and evidence heard at the Evidential Hearing from the Applicant's representatives and witnesses and from the Respondent.

4. The Tribunal was satisfied that the Applicant's stated reason for wishing to recover possession of the Property, namely to sell for financial reasons due to their changing personal circumstances and to help fund their retirements was genuine. The Tribunal had regard to the email correspondence between one of the Applicants, Mrs Susan McCamley and their letting agents dated various dates in January 2023 advising of their wish to sell and instructing service of the relevant notices on Mr Roy. It was apparent to the Tribunal from these emails that the Applicant had sympathy for Mr Roy's situation, given that he had been their tenant for over ten years and had been a good tenant. This was reinforced by the Applicant's instructions to give Mr Roy a longer notice period than was required to give him additional time to find alternative accommodation. The Notices were served on 25 January 2023. The Tribunal noted that Mr Roy had been given 3 months' notice, as opposed to the 2 months required in terms of the legislation. The Tribunal also noted that, although the Tribunal proceedings could have been initiated immediately following the expiry of the notice period on 1 May 2023, they were not initiated until 23 August 2023. Copies of extensive email correspondence between the Applicant's letting agents and the Respondent had been produced by both parties. The Tribunal considered that this correspondence demonstrated that, although relations between the letting agents and Mr Roy were clearly deteriorating, the letting agents were still trying, on behalf of the Applicant, to resolve matters in connection with the boiler, the rent payments having stopped and Mr Roy vacating the Property, without formal proceedings being required. This included the letting agents suggesting mediation.
5. Having regard to the chronology of events, which, again, both parties had helpfully provided in their detailed written submissions, the Tribunal considered that, at the time notice was served on Mr Roy, relations were amicable. There were no rent arrears and both Mr Downie and Mr Watson confirmed in their evidence that they had never had any issues with Mr Roy as a tenant. The Tribunal considers this to be corroborated by the earlier emails between the letting agents and Mr Roy when notice was served, wherein he was provided with an "exemplary" (as Mr Roy himself described it) tenancy reference confirming that the letting agents would be happy to let to Mr Roy again. The letting agent also offered to assist Mr Roy in finding alternative private let accommodation. Mr Roy himself said in evidence that he had been pleased with the reference and had asked for his thanks to be passed on to the Applicant in respect of being his landlords over the past ten years.
6. The Tribunal was not accordingly satisfied that Mr Roy's opposing position had been established, namely that there was an ulterior motive behind the Applicant's decision to seek to recover the Property from him or that they were being encouraged or "put up" to this by their letting agents, particularly Mr Watson. Nor was the Tribunal satisfied that there was any evidence of a campaign of harassment against Mr Roy, as he alleges, either by the letting

agents or personally by Mr Watson, to try and force him to leave the Property. The Tribunal did consider the close proximity in timing between the installation of the new boiler in November 2022, followed by the issues immediately arising with it, and the service of notice on Mr Roy in January 2023 but were persuaded, for the reasons stated in the preceding paragraphs, by Mr Downie's evidence that this had simply been coincidental. It appeared to the Tribunal that relations really only deteriorated after notice was served.

7. It was noted by the Tribunal from the rent statement produced that the first rent due date which was missed by Mr Roy was 1 February 2023, just a few days after Notice was served. Mr Roy maintains that this was due to the ongoing issues with the boiler which were not being resolved and had referred in his written submissions to the stress, inconvenience and effects on his general health from not having a fully working heating system over the winter months. Mr Roy had lodged detailed written representations and submissions prior to the CMD relating to the boiler issues, including copies of his extensive email correspondence with the letting agents; copies of messages between himself and plumbers/heating engineers; details of his own qualifications, relevant work experience and knowledge; photographs of the boiler and related issues; copies of the Gas Safety Certificate dated 13 December 2022 and Periodic Property Inspection Report dated 1 December 2022; and details and evidence of Mr Roy's health conditions, recent treatments and medication.
8. It was clear to the Tribunal that the boiler issues and the resulting breakdown in Mr Roy's relations with the letting agents had had a significant impact on Mr Roy and was his main focus in respect of these eviction proceedings and his arguments with regard to reasonableness. The Tribunal accepted Mr Roy's evidence that he was aggrieved at the delays in the boiler issues being resolved and frustrated that the heating engineer and Mr Watson did not listen to him, or disagreed with him, as to the likely cause(s), especially given his stated background knowledge and expertise. It was also clear to the Tribunal that Mr Roy's relations with Mr Watson, in particular, deteriorated as a consequence of this, leading to Mr Roy making formal complaints to the letting agents which he does not consider were properly investigated or resolved. For their part, both Mr Downie and Mr Watson conceded that there had been delays in the boiler issues being resolved and in the Gas Safety Certificate and Periodic Property Inspection Report being produced to Mr Roy. However, they denied that the delays were deliberate or that there was any bad faith on their part. Mr Downie referred in his evidence to the 'stalemate' situation which had arisen by March 2023, by which time Mr Roy had stopped paying his rent but had also stopped preventing any further access to allow the boiler issues to be resolved. The Tribunal's view from consideration of all the evidence was that neither party was acting in bad faith. As stated in the paragraphs above, the Tribunal was satisfied that the Applicants had a genuine wish to sell for financial reasons and that their letting agents were legitimately trying to resolve the boiler issues and other issues with Mr Roy. Likewise, the Tribunal did not consider that Mr Roy was just using the boiler issues as an excuse for not paying his rent or opposing the eviction. It was clearly a matter of considerable personal importance to Mr Roy.

9. However, as had been explained to Mr Roy at the CMD, whilst the boiler issues could have been a basis for defending any proceedings brought against him for payment of the rent arrears, or for eviction on a rent arrears ground, the boiler issues were not, in the Tribunal's view, of particular relevance to the eviction ground here, namely that the short assured tenancy had come to an end through service of the appropriate notices. Had the Tribunal been satisfied that the issues with the boiler and Mr Roy's complaints regarding the issues which had arisen following the boiler installation had been the reason for the Applicant's decision to instruct their letting agents to serve notice in the first place, or that there had been a deliberate plan not to resolve, or to delay resolving these issues, in an attempt to force Mr Roy to leave, this would have had some bearing on the Tribunal's considerations as to the reasonableness of granting the order. However, as stated in the paragraphs above, the Tribunal was not so satisfied. If Mr Roy considered that the Applicant had failed in their landlord obligations as to repair and maintenance, he could have pursued action against them by making a Repairs application to the Tribunal under the Housing (Scotland) Act 2006. Likewise, if Mr Roy considered that the letting agents were acting in bad faith or not fulfilling their duties as letting agents, he could have taken, or still take, separate action against them. The Tribunal considered that it was regrettable that there had been a delay in the boiler issues being resolved and in Mr Roy receiving the documentation he had requested from the letting agents between November 2022 and March 2023 as this had led to a breakdown in relations and trust between Mr Roy and the letting agents, such that Mr Roy refused further access, which, in turn, caused a further lengthy delay before the boiler issues were finally resolved. It appeared to the Tribunal that Mr Roy's annoyance with, and distrust of, the Applicant's letting agents also had a bearing on his views and approach towards these eviction proceedings and, unfortunately, led to a proposed agreed resolution of the proceedings not being achievable.
10. The Tribunal considered the other matters put forward by Mr Roy in respect of reasonableness. Mr Roy's age, numerous health conditions, the length of time he had lived in the Property (now in excess of eleven years) and the fact that he had been a good tenant throughout were all significant factors weighing in his favour. Mr Roy did not mention in his evidence having a significant attachment to the Property itself, nor the local area or community and indeed, appears to be considering a move to the Falkirk area, where he has family residing. Mr Roy has sought advice on his housing situation, taken steps to obtain alternative housing and confirmed that he is on waiting lists for social housing, both with Falkirk Council and some housing associations. Mr Roy confirmed having made the social housing providers aware of his current circumstances, housing needs and medical conditions and it is the Tribunal's understanding, from Mr Roy's evidence, that his age and medical conditions are likely to raise his priority level in terms of his housing applications, as would the granting of an eviction order under a 'no fault' ground. The Tribunal was satisfied from Mr Roy's own evidence and from the recent email correspondence lodged between Mr Roy and the letting agents that he had intended to move out of the Property on 1 May 2024 and was working towards

that date, until the proposed agreement broke down. Mr Roy stated in his evidence that he still intended to move out of the Property and was partially packed but required some more time, due to the volume of his personal belongings and his mobility problems which are slowing him down. He considered that a three-month extension would be sufficient but would aim to remove from the Property sooner than that. There was no objection on behalf of the Applicant to an extension of time as such, although the Applicant did wish to sell the Property as soon as possible and have some certainty on the matter.

11. Overall, having weighed all the circumstances, the Tribunal considered that the balance here was in favour of the Applicant. In the Tribunal's view, (i) the background to this tenancy and the Applicant's reasons for requiring to sell the Property for financial reasons, due to their changing circumstances, combined with (ii) the added financial pressure of the Respondent withholding rent since March 2023 (whether or not justified) and not intending to resume rental payments to the Applicant meantime, (iii) the fact that the Respondent has known about the Applicant's wish to recover the Property since at least January 2023 and (iv) the Respondent's stated intention to remove from the Property and the steps he has taken towards that, outweigh the factors specified at the start of paragraph 10 above which weigh in favour of the Respondent. The Tribunal accordingly concluded that it is reasonable for an eviction order to be granted. Having regard to both parties' comments about an extension of the timeframe within which the eviction order can be enforced, the Tribunal considered it appropriate to add a further month over and above the usual period that would apply, meaning that the Respondent will have a period of two months from the issuing of this Decision to remove from the Property.

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.

N Weir

Legal Member/Chair

29 April 2024
Date