



**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/24/0317**

**Re: Property at Flat 4C, 91 Broomhill Drive, Glasgow, G11 7AP (“the Property”)**

**Parties:**

**Mrs Catherine McGovern, 47 Roman Road, Bearsden, Glasgow, G61 2QP (“the Applicant”)**

**Ms Sharlene Heavrin, Flat 4C, 91 Broomhill Drive, Glasgow, G11 7AP (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member) and John Blackwood (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for possession of the property and the removal of the Respondent from the property.**

**Background**

1. By application dated 19 January 2024 the Applicant’s representative, Mr Vincent McGovern, applied to the Tribunal for an order for possession of the property and the removal of the Respondent from the property in terms of Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Applicant’s representative submitted a copy of the tenancy agreement together with copies of a Notice to Quit and Section 33 Notice with Execution of Service, copy emails and WhatsApp messages, copy Section 11 Notice and email and statements from the Applicant and the Applicant’s representative in support of the application.
2. By Notice of Acceptance dated 26 March 2024 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 12 June 2024.

### **The Case Management Discussion**

4. A CMD was held by teleconference on 17 July 2024. The Applicant did not attend but was represented by her representative Mr Vincent McGovern and the Respondent attended in person.
5. The Respondent confirmed she had commenced a Short Assured tenancy of the property on 14 December 2016. The Respondent could not remember if she had received an AT5 prior to the commencement of the tenancy.
6. Mr McGovern referred the Tribunal to his statement submitted with the application and confirmed that the AT5 had been sent to the Respondent with the draft tenancy agreement and that the Respondent had confirmed in the signed tenancy agreement that she had received it.
7. The Respondent confirmed that she had been served with a Notice to quit and Section 33 Notice and that she had been in contact with the Local Authority Homeless Unit and had been assigned a case worker. The Respondent explained that her application to be rehoused could not be progressed until an order for possession was granted by the Tribunal and she had been told there was a shortage of three-bedroom properties available.
8. In response to queries from the Tribunal the Respondent confirmed she was not opposing the order sought as thought it was up to the Applicant to do what she wanted with the property. The Respondent explained that she did not mind where she was rehoused and that she had not been given any timescale for the provision of accommodation but had been told that in the first instance she may be moved into furnished property. The Respondent confirmed her case worker was aware of the case calling today. The respondent advised the Tribunal that she had three children living with her at the property, a son aged 18 and two other children aged 11 and 3. The Respondent said that her 11-year-old attended school locally and her 3-year-old attended a local nursery. Her 18-year-old was looking for employment and was in receipt of Universal Credit.
9. Mr McGovern referred the Tribunal to the reasons given in the Applicant's written representations and submitted that it was reasonable to grant the order sought. He said he conceded and recognised that the Respondent's application for housing would not be progressed until an order was granted by the Tribunal and that the Respondent was not opposing the application. Mr McGovern also referred the Tribunal to his email of 4 July 2024 and explained that although he was not looking to recover the rent arrears and noted that the Respondent had raised the issue with the Local Authority if the order was not granted it was unlikely that the Respondent could afford to meet the £84.00 per month shortfall in rent from her benefits and the arrears would continue to rise. Mr McGovern asked the Tribunal to grant the application.

## **Findings in Fact**

10. The parties entered into a Short Assured Tenancy that commenced on 14 December 2016 and endured until 13 December 2017 and continued by tacit relocation thereafter.
11. A Form AT5 was served on the Respondent prior to the commencement of the tenancy and the Respondent acknowledged receipt in the tenancy agreement.
12. The Respondent was served with a Notice to Quit and Section 33 Notice dated 14 September 2023.
13. Glasgow City Council was given notice of the proceedings by way of as Section 11 Notice by email on 19 January 2024.
14. The Applicant intends to sell the property to assist in the funding of her and her husband's retirement and to support their dependant child.
15. The Respondent has three children living with her aged 18, 11 and 3.
16. The Respondent does not oppose the application.
17. The Respondent has applied to Glasgow City Council to be rehoused and has been advised that her application cannot be progressed until the Tribunal determines the application.

## **Reasons for Decision**

18. The Tribunal was satisfied from the documents submitted and the oral submissions of both parties that the parties entered into a Short Assured tenancy that commenced on 14 December 2016. The Tribunal accepted the submissions on behalf of the Applicant that a Form AT5 had been sent to the Respondent along with the draft tenancy agreement prior to the commencement of the tenancy and that receipt had been acknowledged by the Respondent when she signed the tenancy agreement. The Tribunal was also satisfied that a valid Notice to Quit and Section 33 Notice had been served on the Respondent under Section 33 of the 1988 Act and that proper intimation of the proceedings had been given to Glasgow City Council by way of a Section 11 Notice.
19. The Tribunal was therefore satisfied that procedurally the criteria for granting an order for the eviction of the Respondent from the property had been met

subject to it being reasonable for such an order to be made. In reaching a decision on reasonableness the Tribunal noted that neither party took any issue with the other party's position as stated by them. The Tribunal therefore had to balance the needs of the Applicant with the needs of the Respondent in arriving at a decision. On the one hand the Tribunal noted that the Applicant intends to sell the property to assist in funding her and her husband's retirement and support their dependent child now that the Applicant's husband had retired and she was working part-time. On the other hand the Respondent had three children living with her one at school locally and another at nursery. In reaching its decision, the Tribunal took account of the fact that the Respondent had applied for housing through the Local Authority and had been told that her application would not be progressed until an order had been granted by the Tribunal. The Tribunal also took account of the fact that the Respondent was not opposing the application.

20. After carefully considering the circumstances of both parties the Tribunal was persuaded that the needs of the Applicant in this application were such that although there would undoubtedly be an adverse impact on the Respondent and her family the needs of the Applicant were greater. The Tribunal considered that in light of the Applicant's husband retiring and it having always been their intention to realise capital from the property to assist in funding their retirement and support their family it was reasonable to grant the order sought particularly when the Respondent was not opposing the application and was seeking to be rehoused by the Local Authority and should have some priority having young children living with her.

### **Decision**

21. The Tribunal being satisfied it had sufficient information before it to make a decision without the need for a hearing, finds the Applicant entitled to an order for possession of the property and the removal of the Respondent 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.**

Graham Harding

**17 July 2024**

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**Legal Member/Chair**

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**Date**