



**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/24/0337**

**Re: Property at Flat 2/3, 1103 Cathcart Road, Mount Florida, Glasgow, G42 9XP  
("the Property")**

**Parties:**

**Mrs Claire Knape, C/O 14 Parklee Drive, Carmunnock, Glasgow, G76 9AS ("the  
Applicant")**

**Ms Moira Buchanan, Flat 2/3, 1103 Cathcart Road, Mount Florida, Glasgow,  
G42 9XP ("the Respondent")**

**Tribunal Members:**

**Valerie Bremner (Legal Member) and Melanie Booth (Ordinary Member)**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that a possession order be granted in relation to the property in favour of the Applicant.

**Background**

1. This application in terms of Rule 66 of the Tribunal rules of procedure was first lodged with the Tribunal on 22<sup>nd</sup> January 2024 and accepted by the Tribunal on 21<sup>st</sup> March 2024. A case management discussion was fixed for 19<sup>th</sup> July at 2pm.

**Case Management Discussion**

2. The Applicant did not attend the case management discussion but was represented by Mr Edwin Duncan. The Respondent attended the case management discussion and represented herself but was supported by Ms Sweeney of Glasgow South Community Homeless Team.

3. The Tribunal had sight of the Application, a tenancy agreement, a mandate for Mr Duncan to appear, a notice to Quit, a notice in terms of Section 33 of the Housing (Scotland) Act 1988, information regarding the hand delivery of the Notices through the letterbox with a photograph, a notice to the local authority in terms of Section 11 of the Homelessness etc. (Scotland ) Act 2003 and an email sending this to the local authority.

4. The Tribunal noted that it did not have sight of a Form AT5 and adjourned to give Mr Duncan time to lodge the back page of the tenancy agreement to see if it contained any information regarding an AT5 and during the adjournment Mr Duncan also found a copy of an AT5 form and believed that this form had been given to the Respondent at the time the tenancy had been created. These documents were lodged with the Tribunal and sent by email to the Respondent.

5. The parties had entered into a short assured tenancy at the property with effect from 1<sup>st</sup> July 2013 for an initial period of 6 months. The tenancy appeared to continue on a six monthly basis by tacit relocation after this initial term.

6. The Applicant hand delivered a Notice to Quit and a Notice in terms of Section 33 of the Housing (Scotland) Act 1988, both dated 26<sup>th</sup> October 2023 to the Respondent on 28<sup>th</sup> October 2023, giving notice that the Applicant required the Respondent to quit the property by 31<sup>st</sup> December 2023 and that possession was required by that date.

7. A notice in terms of Section 11 of the Homelessness etc. (Scotland) Act 2023 was sent the Glasgow City Council on 15th January 2024.

8. The Applicant's position was that the Applicant intended to sell the property as the costs of ownership, insurance, fees and maintenance was greater than the income generated by the rental of the property. The mortgage on the property was about to be reviewed and was likely to increase. The property had been Mr Duncan's daughter's home until she had moved in with her husband and it had been let out since then. The Respondent was the fourth tenant. It had never been their intention to keep the property on a long term basis and had planned to sell in 2020 but had not done so. The Applicant did not wish to remain in the rental market. The Respondent had been a very good tenant and Mr Duncan said that in terms of the tenancy that they were sorry things had to end this way.

9. Miss Buchanan the Respondent said that she understood the landlord needed to sell the property and could not oppose their request. Her concern was that this was making her homeless after living at the property for 11 years. She said that due to a rise in housing costs the private sector was now unaffordable and she would need to go into social housing. She said she had taken advice and she was aware there was a process to go through and she might firstly go into emergency accommodation for her and her dog. She did not wish to become homeless after 11 years and concerns around the process and what would happen were making her very anxious. She did not wish the tribunal to delay execution of any order if it was granted.

10. Miss Buchanan advised that she suffers from mental health problems and had been admitted to hospital last year for these issues. She is self-employed and in

receipt of housing benefit and working tax credit. She said that she had no reason to doubt that she had received the Form AT5 and raised no objection to the forms served on her. She said that she had massive anxiety about having to leave her home but had some friends who had offered to help her.

## **Relevant Legislation**

### **Recovery of possession on termination of a short assured tenancy.**

#### **Section 33 Housing (Scotland) Act 1998**

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied—

(a) that the short assured tenancy has reached its finish;

(b) that tacit relocation is not operating;

(c) . . . . .

(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house and

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

(2) The period of notice to be given under subsection (1) (d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;

(ii) in any other case, two months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.

11. The Tribunal considered that it had sufficient information upon which to make a decision and that the proceedings had been fair.

## **Findings in Fact**

11. The parties entered into a tenancy at the property with effect from 1<sup>st</sup> July 2013 for a period of six months.
12. The tenancy continued by way of tacit relocation after the initial term.
13. A form AT5 was given to the Respondent at the time the tenancy was created.
14. The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
15. On 28<sup>th</sup> October 2023 the Applicant hand delivered a Notice to Quit in proper form to the Respondent by putting this through the letterbox at the property and this notice required the Respondent to quit the property by 31<sup>st</sup> December 2023.
16. On 28<sup>th</sup> October 2023 the Applicant hand delivered a notice in terms of section 33 of the Housing (Scotland) Act 1988 in proper form to the Respondent by putting this through the letterbox at the property and this notice required possession of the property by 31<sup>st</sup> December 2024.
17. The Notice to Quit terminated the tenancy with effect from 31<sup>st</sup> December 2023 which is a valid end date for the tenancy.
18. Tacit relocation is not now in operation in relation to this tenancy.
19. A notice in terms of section 11 of the Homelessness etc. (Scotland) Act 2003 was sent to Glasgow City Council in relation to this application on 15<sup>th</sup> January 2024.
20. The Applicant wishes to sell the let property when vacant and no longer to be a landlord.
21. The costs of renting out the property are more than is received in relation to the property and the mortgage on the property is to be reviewed in 2024 and will likely increase.
22. The Respondent does not oppose the granting of a possession order to the Applicant in relation to the property.
23. The Respondent intends to seek to go into social housing as the private rented sector is now too expensive.
24. The Respondent suffers from mental health issues and is in receipt of benefits and is very concerned about becoming homeless if a possession order is granted.

## **Reasons for Decision**

25. The Tribunal was satisfied that the Notice to Quit and notice in terms of Section 33 of the Housing (Scotland) were in proper form and that the tenancy had been ended and that tacit relocation was not in operation. The Tribunal had to consider whether it was reasonable to grant a possession order. The Tribunal considered all of the circumstances before it and the needs of the parties. The Applicant no longer wished to rent out the property and the costs of renting outweighed the rent received. The Respondent has mental health problems and is very concerned about being evicted and being homeless. She has already considered going into social housing and understands the process she will go through to obtain other accommodation. The Respondent did not oppose the order being granted and understood that the Applicant wished to sell the property. Having weighed up all of the circumstances the Tribunal considered it was reasonable to grant a possession order.

### **Decision**

The Tribunal granted a possession order in relation to the property in favour of the Applicant.

### **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.**

# V. Bremner

Legal Member/Chair

19.7.24  
Date \_\_\_\_\_