



**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/24/0831**

**Property: 54 Kempsthorn Crescent, Glasgow G53 5ST ("Property")**

**Parties:**

**Steven Drennan, 22 Faskin Road, Glasgow G53 7EU ("Applicant")**

**Chattelle Estates, 120 Eastwoodmains Road, Glasgow G76 7HH ("Applicant's Representative")**

**Maureen Roy, 54 Kempsthorn Crescent, Glasgow G53 5ST ("Respondent")**

**Legal Services Agency Ltd, 2<sup>nd</sup> Floor, Savoy House, 140 Sauchiehall Street, Glasgow G2 3DH ("Respondent's Representative")**

**Tribunal Members:**

**Joan Devine (Legal Member)**

**Leslie Forrest (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("Tribunal") determined that an order for possession of the Property should be made.**

**Background**

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: Short Assured Tenancy Agreement and AT5 dated 11 November 2016; Notice to Quit and Notice in terms of section 33 of the Housing (Scotland) Act 1988 ("1988 Act") both dated 5 September 2023 and both addressed to the Respondent; sheriff officer certificate of service evidencing service of the Notice to Quit and Section 33 Notice on the Respondent on 8 September 2023 and notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering letter dated 16 February 2024. The Tribunal had sight of a sheriff officer's execution of service confirming service of the Application on the Respondent on 20 June 2024. On 12 July 2024 the Respondent's Representative

lodged a written submission. On 12 July 2024 the Applicant's Representative lodged a written submission.

### **Case Management Discussion ("CMD")**

A CMD took place on 29 July 2024. Graeme McDonald of the Applicant's Representative was in attendance as was Fiona Anderson of the Respondent's Representative. The Tribunal noted that the term of the tenancy agreement was for 6 months "*from the [11/11/16] ("start date") and will end on [ 1/5/17] ("end date")*" and asked Ms Anderson her position regarding the discrepancy between the period of 6 months and the dates stated. She said that the date "1/5/17" appeared to be a typing error. The tenancy agreement was headed "short assured tenancy" and an AT5 had been signed. She said the Respondent had understood that the period of the tenancy was 6 months.

Mr McDonald told the Tribunal that the Respondent had not paid any rent in 2024. Ms Anderson said that rent was being withheld as there were outstanding repairs at the Property. She said the Respondent had reported mould and damp. Mr McDonald said the matter was complex. He said that there had been difficulties gaining access to the Property.

Mr McDonald said that the Applicant intends to sell the Property. He said it is the only rental property owned by the Applicant. He told the Tribunal that the Applicant is disabled and his father and solicitor look after his affairs.

Ms Anderson told the Tribunal that the Respondent is 56 years old and has various health issues including arthritis, asthma and diverticulitis. She said that her 18 year old daughter lives with her and she gave birth to a son on 9 June 2024. She said that the Respondent's daughter also suffers from asthma and that a heart issue had been identified during her pregnancy. She said the Respondent cares for her elderly mother who has dementia and mobility issues. She said the Respondent has been in touch with the local authority about alternative accommodation. She said that the Respondent does not oppose the grant of an eviction order but seeks a delay in execution of 3 months over and above the 30 day appeal period. Mr McDonald said that any delay in enforcement was opposed as the process had taken too long already.

### **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement dated 11 November 2016 which commenced on 11 November 2016.

2. The tenancy was for a period of 6 months commencing 11 November 2016 and month to month thereafter.
3. The rent was due on the 11th day of each month.
4. The tenancy agreement contained a typographical error in that it stated that the “end date” of the tenancy was “1/5/17” when it should have read “11/5/17”.
5. The Applicant and the Respondent signed a form AT5 dated 11 November 2016.
6. A Notice to Quit dated 5 September 2023 was served on the Respondent on 8 September 2023 stating that the tenancy would terminate on 11 November 2023.
7. A Notice in terms of Section 33 of the 1988 Act dated 5 September 2023 was served on the Respondent on 8 September 2023 stating that possession of the property was required on 11 November 2023.
8. The tenancy reached its *ish* on 11 November 2023 and is not continuing by tacit relocation.
9. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003.

### **Reasons for the Decision**

The Tribunal considered that there was a typographical error in the tenancy agreement in that the end date of “1/5/17” should have read “11/5/17”. The Respondent understood she was entering into a tenancy agreement for a period of 6 months and that it was a short assured tenancy. The heading to the tenancy agreement, the execution of an AT5 and the reference in clause 1.1 of the tenancy agreement to a period of 6 months all supported the submission that there was an error in the date and that a short assured tenancy had been created.

The Tribunal determined to make an Order for possession of the Property in terms of Section 33 of the 1988 Act. The Tribunal noted that the tenancy had been properly created as a short assured tenancy and that a Section 33 Notice and Notice to Quit had been served on the Respondent giving two months' notice that the Applicant required possession of the Property.

Having considered all of the circumstances, the Tribunal determined that it was reasonable to issue an eviction order but to delay execution for a period of 2 months. The Tribunal determined to delay execution of the order for possession in light of the

health issues suffered by the Respondent and her daughter and the need for the Respondent to find alternative accommodation close to her elderly mother.

### **Decision**

The Tribunal grants an Order for possession of the Property but to delay execution until 28 October 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.**

# Joan Devine

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Legal Member

Date : 29 July 2024