



**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/24/0972

**Re: Property at 38 Thornley Avenue, Glasgow, Lanarkshire, G13 3BY (“the
Property”)**

Parties:

**Mr Stephen Morrison, 26B Skelmorlie Castle Road, Skelmorlie, PA17 5AL (“the
Applicant”)**

**Mr Michael Lang, Gregg Lang, Miss Sharon McCrory, 38 Thornley Avenue,
Glasgow, Lanarkshire, G13 3BY (“the Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondents)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined to make an eviction order against the Respondent**

Background

- 1 By application to the Tribunal dated 28 February 2024 the Applicant sought an eviction order against the Respondents in respect of the Property under section 33 of the Housing (Scotland) Act 1988. In support of the application the Applicants provided the following documentation:-
 - (i) Short Assured Tenancy Agreement between the parties dated 9 September 2017 together with Form AT5;
 - (ii) Notice to Quit dated 3 November 2023 together with proof of service by Sheriff Officers on 6 November 2023;

- (iii) Notice under section 33 of the Housing (Scotland) Act 1988 dated 3 November 2023 together with proof of service by recorded delivery on 6 November 2023;
 - (iv) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Glasgow City Council together with proof of service by email;
 - (v) Copy letter from Patten and Prentice Solicitors to the Respondents dated 21 February with tenant rights information enclosed.
- 2 By Notice of Acceptance of Application dated 20 March 2024 a Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned and a copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers.

Case Management Discussion

- 3 The Applicant was represented at the Case Management Discussion by Mr Caldwell of Patten and Prentice Solicitors. The Respondent was not present. The Tribunal noted that he had been served with the application paperwork which included notification of the date and time of the Case Management Discussion together with instructions for joining the teleconference. The Tribunal therefore determined to proceed in his absence.
- 4 The Tribunal explained the purpose of the Case Management Discussion and the legal test and asked Mr Caldwell for the submissions on behalf of the Applicant. For the avoidance of doubt the following is a summary of the submissions made and does not constitute a verbatim account of the discussion.
- 5 Mr Caldwell advised that the tenancy had begun on 9 September 2017, making reference to the tenancy agreement and Form AT5 that had been lodged with the application. A notice to quit and section 33 notice had been served on 3 November 2023, with an effective date of 9 January 2024. The application to the Tribunal had then been submitted on 28 February. The Applicant was 45 years old and the property had been his previous home. He had vacated the property and entered into the tenancy agreement with the Respondent following a change in his relationship status which resulted in him moving into his partner's property. He and his partner had since purchased a plot of land and his plan was to sell the property in order to fund a self-build home. They were residing in a caravan on the site on a temporary basis whilst awaiting funds. Mr Caldwell further advised that the property was no longer as commercially viable as it once was. The rent was £721 per calendar month. The Applicant's mortgage and other outgoings amounted to £604. He was therefore making a small profit of around £116 per month. Furthermore the Applicant's current mortgage deal was due to come to an end later in the year and the new mortgage products were more expensive.

6 Mr Caldwell reiterated that the main compelling reason for sale was to release the equity in the property. In terms of his understanding of the Respondents circumstances, Mr Caldwell believed there to be a family connection between them. Michael Lang and Gregg Lang may be brothers, and Sharon McCrory was also related in some shape or form. The property was a two bedroom flat, worth in the region of £115,000. In response to questions from the Tribunal Mr Caldwell advised that he had supplied the Respondents with advice on homelessness and tenant information however there had been no response from them. There had been some historic issues of tardy payments however there were no rent arrears presently outstanding and no indication of any entitlement to universal credit. He was not aware of any dependents in the property, unless matters had developed in the last six months. Mr Caldwell believed that the Respondents were in their mid-50s. He invited the Tribunal to make an eviction order on the basis that it was reasonable to do so.

Relevant Legislation

7 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Housing (Scotland) Act 1988, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

“33 Recovery of possession on termination of a short assured tenancy.

(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 ish;

b) that tacit relocation is not operating; and

(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 six months, that period;

(ii) in any other case, six 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.”

Findings in Fact and Law

- 8 The Applicant entered into a Short Assured Tenancy Agreement with the Respondent dated 9 September 2017, the term of which was 9 September 2017 to 9 September 2018 and monthly thereafter.
- 9 The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 10 On 6 November 2023 the Applicant delivered to the Respondents a Notice under section 33 of the Housing (Scotland) Act, stating that the Applicant required the property back by 9 January 2024, and a Notice to Quit which sought to terminate the tenancy as at that date. The Notice to Quit was in the prescribed form. The Notices were served by Sheriff Officers
- 11 The Notice to Quit terminates the tenancy as at 9 January 2024 which is an ish date under the terms of the tenancy agreement.
- 12 The Applicant requires vacant possession of the property in order to sell the property and fund the purchase of a new home. The Applicant is currently residing in temporary accommodation with his partner.
- 13 The property was previously the Applicant’s principal home.
- 14 The current term for the mortgage the Applicant has over the property is due to expire in September 2024. It will no longer be financially viable for the Applicant to continue to rent the property as the mortgage and associated property costs will likely exceed the market rent achievable.
- 15 The Applicant has supplied the Respondents with information regarding homelessness and their tenancy rights. The Respondents have not engaged following the provision of said information.
- 16 The Respondents are believed to be in their mid-50s. There are no children residing in the property.

Reasons for Decision

- 17 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved.
- 18 The Tribunal was satisfied that the Respondent had been served with a valid Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988, terminating the tenancy as at the ish date of 9 January 2024. The issue for the Tribunal to determine therefore was whether it was reasonable in all the circumstances to grant an eviction order.
- 19 The Tribunal accepted the Applicant's reason for terminating the tenancy, namely his intention to sell in order to fund the purchase of a new home. This appeared to be a credible explanation for the action he had taken, supported by the fact that he and his partner were currently residing in temporary accommodation. The Tribunal also took into account the imminent expiry of the current mortgage term, which would result in the mortgage and associated costs likely outweighing the market rent achievable for the property, therefore placing the Applicant in a precarious financial position.
- 20 The Tribunal had limited information regarding the Respondents as a result of their failure to participate in the proceedings. The Tribunal however accepted that there were no dependents in the property, and that the Respondents were all in their mid-50s.
- 21 Having weighed up those factors that were relevant to the question of reasonableness the Tribunal concluded that the prejudice to the Respondents were the eviction order to be granted did not outweigh the prejudice to the Applicant were the tenancy to continue. The Tribunal considered that the Applicant had a genuine and credible reason to seek recovery of the property and on that basis, and taking into account the lack of information from the Respondents, it would be reasonable to grant the eviction order sought.
- 22 The Tribunal therefore determined to make an eviction order. The decision of the Tribunal was unanimous.

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.

Ruth O'Hare

26 July 2024

Legal Member/Chair

Date