



**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/24/1197**

**Re: Property at 24 Reston Drive, GLASGOW, G52 2LW (“the Property”)**

**Parties:**

**Mr Alan Quinn, 6 Edenhall Grove, GLASGOW, G77 5TS (“the Applicant”)**

**Mrs Charlene Marshall, 24 Reston Drive, GLASGOW, G52 2LW (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member) and Helen Barclay (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.**

**Background**

1. By application dated 11 March 2024 the Applicant’s representatives, Penny Lane Homes, Renfrew, applied to the Tribunal for an order for possession of the property under Section 33 of the Housing (Scotland) Act 1988. The Applicant’s representatives submitted a copy Short Assured Tenancy Agreement, Form AT5, Notice to Quit and Section 33 Notice with Sheriff Officers Certificate of Intimation and a Section 11 Notice and email to Glasgow City Council together with other documents in support of the application.
2. By Notice of Acceptance dated 2 May 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 31 July 2024.

4. By email dated 23 August 2024 the Applicant's representatives submitted an updated rent statement to the Tribunal.

### **The Case Management Discussion**

5. A CMD was held by teleconference on 29 August 2024. The Applicant attended in person and was represented by Mr Ross Dalziel from the Applicant's representatives, Penny Lane Homes. The Respondent also attended in person.
6. After explaining the purpose of the CMD the Tribunal noted from the parties that it was agreed that the Respondent commenced a Short Assured tenancy of the property on 7 September 2016 that endured until 7 March 2017 and then continued from month to month thereafter until either party gave two months written notice, The Tribunal also noted that it was agreed that the Respondent had been served with a Notice to Quit and Section 33 Notice by Sheriff Officers on 27 December 2023. The Respondent confirmed that she did not take any issue with the validity of the notices. The Tribunal also noted that Glasgow City Council had been given notice of the proceedings by way of a Section 11 Notice sent by email on 11 March 2024.
7. When asked why she had remained in the property following the expiry of the Notice to Quit the Respondent said she had been told to stay by the homeless advisor at the council and to wait for the Tribunal's decision on the application. The Respondent said that she had three sons living with her at the property aged 20, 11 and 5. She said that the property was really a two bedroom and a boxroom but that the boxroom was used as a third bedroom. The Respondent confirmed the property was on the upper floor and that there were no mobility issues. The Respondent expressed concern at the prospect of being made homeless with her children as Glasgow City Council had declared a housing emergency. She said she had been told by her caseworker that there was not any temporary accommodation and she did not want her children living in a hostel.
8. In response to a query as to why the rent arrears were increasing the Respondent said that there had been an issue with her gas boiler in December or January and it had not worked for seven weeks and she had used the rent money for electric heating. She also said there had been a bit of a mishap in July and she was waiting on insurance money to pay further rent. The Respondent confirmed she was in receipt of benefits including the housing element. In response to a query as to what funds the Respondent had available to pay to the Applicant the Respondent said she thought about £1200.00.
9. For the Applicant Mr Dalziel explained that the Applicant had been concerned about the Respondent's rent arrears and had also been thinking about selling the property and had then made up his mind to sell it. The Applicant went on to explain that he had a portfolio of 13 but-to-let properties that he was gradually reducing in number as he grew older. He said that he usually sold a property when it became empty but because of the history with this property he had

decided to proceed with the application for possession and then to sell. The Applicant explained that there had been a history of rent arrears since 2021 with the payment of rent being sporadic since that time.

### **Findings in Fact**

10. The parties entered into a Short Assured Tenancy that commenced on 7 September 2016 and endured until 7 March 2017 and then continued from month to month thereafter.
11. The Respondent was served with a Section 33 Notice and Notice to Quit by Sheriff Officers on 27 December 2023.
12. Intimation of the proceedings was sent to Glasgow City Council by way of a Section 11 Notice by email on 11 March 2024.
13. The Applicant is in the process of reducing his portfolio of buy-to-let properties as he gets older.
14. The Applicant intends to sell the property once he obtains vacant possession.
15. The Respondent has a history of incurring rent arrears.
16. The Respondent lives in the property with her three sons aged 20, 11 and 5.

### **Reasons for Decision**

17. The Tribunal was satisfied from the written representations and documents submitted together with the oral submissions that the parties entered into a Short-Assured Tenancy that commenced on 7 September 2016 and endured until 7 March 2017 and then continued from month to month thereafter until terminated by either party on giving two months' written notice. The Tribunal was also satisfied that a valid Notice to Quit and Section 33 Notice had been served on the Respondent by Sheriff Officers on 27 December 2023 and that Glasgow City Council had been given notice of the proceedings by way of a Section 11 Notice by email on 11 March 2024. The Tribunal was therefore satisfied that procedurally that the requirements for granting an order for possession had been met subject to it being reasonable in the circumstances.
18. In reaching its decision the Tribunal has taken account of the circumstances of both parties. In particular the Tribunal has noted that as the Applicant is getting older, he wishes to dispose of his entire portfolio of buy-to-let properties over a period of time and that due to difficulties he has experienced with the Respondent's payment of rent since October 2021 has decided he now wishes to recover possession and sell the property. The Tribunal has also considered the Respondent's circumstances and that she has her three sons living with her and therefore the prospect of being made homeless is a genuine worry for her. However, although there may or may not be an issue with regards to withholding rent due to a boiler issue in December or January the Respondent

fully accepted that her rent payments had been sporadic since 2021 and also accepted that there had been further issues since the application was raised that had resulted in more non-payment of rent. The Tribunal was also concerned that despite apparently having funds available to pay rent the Respondent had not made any payment since the application was raised. The Tribunal also took into account the fact that the Local Authority has a duty to provide accommodation for the Respondent and her children in the event of them being made homeless.

### **Decision**

19. The Tribunal being satisfied it had sufficient information before it to make a decision without the need for a hearing determined that the Applicant was entitled to an order for possession of 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  
Legal Member/Chair**

**29 August 2024  
Date**