



**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/23/4373

**Re: Property at Flat 0/2, 191 Auchentoshan Terrace, Glasgow, G21 4UA (“the
Property”)**

Parties:

**Mrs Cindy Mathie, 17 Victoria Park Drive North, Glasgow, G14 9NH (“the
Applicant”)**

**Ms Emma McGarrell, Flat 0/2, 191 Auchentoshan Terrace, Glasgow, G21 4UA
 (“the Respondent”)**

Tribunal Members:

Andrew Upton (Legal Member) and Carol Jones (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an eviction order should be granted against the
Respondent.**

Findings in Fact

1. The Applicant is the Landlord, and the Respondent the Tenant, of the Property under and in terms of a Short Assured Tenancy;
2. The Short Assured Tenancy between the parties has reached its term, and tacit relocation is not operating;
3. The Applicant has given valid notice to the Respondent under section 33(1)(d) of the Housing (Scotland) Act 1988;
4. The only matter for the Tribunal to determine is whether it is reasonable to grant an eviction order.

5. The Property is a ground floor flat in a relatively modern block. It has two bedrooms, and an open plan kitchen/living area. It has not been adapted for use by the Respondent.
6. The Respondent lives at the Property with her nine year old daughter.
7. The Respondent's daughter attends a local primary school in Robroyston, which is a ten minute bus journey from the Property.
8. Both the Respondent and her daughter suffer from asthma. The Respondent also suffers from ADHD and autism.
9. The Respondent attends Springpark Health Centre in Possilpark for medical support, including psychiatric support, which she accesses by taxi or local bus service.
10. The Respondent accesses a support group for single parents in Glasgow City Centre, which she accesses by taxi or local bus service.
11. The local specialist services that the Respondent accesses could still be accessed by her if she were to be rehoused.
12. The Respondent is not in employment. She is in receipt of universal credit, which is her only source of income.
13. The housing element of universal credit is sufficient to cover the full rent.
14. The Respondent's mother and step-father live approximately ten minutes away.
15. The Respondent's aunt lives in Moodiesburn.
16. The Respondent relies on both her mother and aunt for support. In particular, the Respondent requires one of them to be present when someone unknown to the Respondent attends the Property, such as building contractors.
17. Both the Respondent's mother and aunt work, meaning that they need to arrange time off to provide support to the Respondent.
18. The Respondent, until the January 2024, was persistently late in paying rent.
19. Since January 2024, the Respondent has not paid rent to the Applicant.
20. The Property is one of four residential properties in the Applicant's portfolio that she lets. In addition to the Property, the Applicant has two properties in Glasgow and one in the Highlands.
21. The Applicant's property portfolio is her retirement plan.
22. The Applicant has grown despondent ("scunnered") regarding the letting of the Property.
23. The Applicant has determined that the letting of the Property is causing a poor return on her investment due to persistent late payment of rent and, since January 2024, non-payment of rent.
24. The Property is subject to mortgage lending, for which the Applicant is responsible and has had to finance irrespective of the timing of payment of rent and, separately, the non-payment of rent.
25. The Applicant is responsible for payment of factors fees, including common charges, and has had to finance those irrespective of the timing of payment of rent and, separately, the non-payment of rent.
26. The Applicant wishes to sell the Property.
27. The Applicant has had discussions with West of Scotland Housing Association, consequent upon receipt of a "mail-merge" email seeking opportunities to buy properties in blocks managed by West of Scotland Housing Association, about the Housing Association purchasing the Property.

28. West of Scotland Housing Association will not purchase the Property with a sitting tenant.
29. The Respondent reported an issue with damp at the Property. A contractor attended, renewed the sealant around a Juliet balcony door, including by filling a gap in the sealant at the base of the door.
30. The Applicant intends to retain, and continue to let, the other properties in her portfolio. She only intends to sell the Property.
31. The relationship between the parties has broken down irreparably, and is hostile.
32. The Applicant's mental health is being negatively affected by the dispute between the parties.
33. The Respondent no longer wishes to live in the Property.
34. The Respondent's mental health is being negatively affected by the dispute between the parties and the condition of the Property.
35. The extractor fans in both bathrooms in the Property are not in working order and require repair or replacement.
36. There is dampness and mould growth in the Property, though the cause of that is uncertain.
37. There are small spots of black mould in the hall, likely caused by condensation.
38. There are small spots of black mould in the main bathroom, likely caused by condensation.
39. The wall of the main bathroom, beneath the radiator, is stained and very wet and requires investigation to determine the cause.
40. Water is pooling under the toilet in the main bathroom and requires investigation to determine the cause.
41. The trap fitting under the main bathroom sink is leaking and requires repair.
42. There is significant black mould growth in the second bedroom that requires investigation to determine the cause.
43. In particular, the wall in the wardrobe of the second bedroom is stained, the wall and carpet are very wet and, given its proximity to water and foul water pipework, requires investigation of the common parts.
44. There is isolated black mould in the master bedroom that requires investigation to determine the cause.
45. The walls on either side of the patio doors in the living room are damp, and require investigation to determine the cause.
46. The rainwater downpipe adjacent to the Juliet balcony is broken and requires replacement.
47. The Respondent delayed in providing access for investigations and repairs at the Property due to (i) the Respondent needing either her mother or aunt to be present for support, and, (ii) the Respondent not wanting the wants of repair to be remedied before the Tribunal had an opportunity to carry out its inspection.
48. The Applicant has been paying her rent into a separate bank account with Monzo Bank, pending completion of repairs.

Findings in Fact and Law

1. The Short Assured Tenancy between the Parties has reached its end.
2. Tacit relocation is not operating.

3. The Applicant has given notice to the Respondent in terms of section 33(1)(d) of the Housing (Scotland) Act 1988.
4. In all of the circumstances, it is reasonable to make an order for possession of the Property.

Statement of Reasons

1. This Application called for its Hearing on 19 August 2024 by teleconference call. The Applicant was represented by her husband, Mr Douglas Mathie. The Respondent was present on the call, and was supported by her mother.
2. In this Application, the Applicant seeks an eviction order against the Respondent. The tenancy between the Parties is a Short Assured Tenancy. The Applicant has given notice to quit and notice under section 33(1)(d) of the Housing (Scotland) Act 1988 to the Respondent. At the Case Management Discussion on 10 April 2024, the Respondent accepted that the appropriate notices had been validly given. The only question for the Tribunal to determine was whether it was reasonable to grant the eviction order.
3. At the Case Management Discussion on 10 April 2024, one factor that the Applicant relied upon, when considering reasonableness, was that the Respondent was in rent arrears. The Respondent admitted having not paid rent since January 2024, but contended that the rent had been, and was being, withheld to force the Applicant to undertake necessary repairs to the Property. The Tribunal agreed that the existence or otherwise of rent arrears was an important factor to consider, and determined that an inspection of the Property should take place to consider the extent of any repairing issues, and a surveyor member was appointed to the Tribunal for that purpose.

The Inspection

4. The Inspection took place on the morning of 19 August 2024. The Inspection was attended by the Tribunal, the Respondent and the Respondent's mother. The Applicant did not attend the Inspection, and was not present at it.
5. The Tribunal viewed the external and internal areas of the Property. Readings were taken in various locations by Ms Jones using a damp meter. A number of photographs were taken using a digital camera, and a photographic schedule is attached to this Decision to record the condition as at the date of Inspection.
6. The weather conditions during the Inspection were mild, dry and overcast. The inspection followed several days of persistent rainfall.
7. The Property is a ground floor flat accessed from a common close. The close has secure entry doors at either end of the close, leading to paths to the front and rear respectively. On entering the Property, there is a hall. The first door

on the left leads into an open-plan living room and kitchen. The first door on the right leads to the main bathroom. The second door on the right leads into the second bedroom. The third door on the right leads into the master bedroom, which is en-suite.

The Hall

8. The Tribunal was directed to black spots at different locations in the hall. Surface damp meter readings were taken at different areas in the hall. The damp meter suggested that the walls were dry. Insofar as there were clusters of black spots appearing on the walls, the Tribunal determined that these were, more likely than not, caused by condensation as a result of water vapour escaping from the main bathroom.

The Living Room/Kitchen

9. The Tribunal was directed to the patio doors in the living room, which form part of a Juliet balcony. The doors are uPVC construction. They benefit from trickle vents, which the Respondent claims to keep open. The uPVC frame has six screw holes bored along the top: two in the top left hand corner, two in the top-centre, and two in the top right hand corner. The Respondent stated that she had not noticed the holes before, and had not secured any fixing into the door frame. The doors were partially covered by a roller blind and curtains, but both were fixed to the surface of the lintel above the patio door frame.
10. The walls around the Juliet balcony doors were not damp to touch and there was no evidence of black spot mould. Surface damp meter readings were taken to the walls around the doors. The lower part of the wall to the right of the doors showed a moderate damp reading. The lower part of the wall to the left of the doors showed a low-to-moderate damp reading. Additional readings were taken after inserting the pins into the plasterboard walls. The lower part of the wall to the right of the doors showed a moderate-to-high damp reading. The lower part of the wall to the left of the doors showed a moderate-to-high reading. All readings decreased higher up the wall.
11. There was no other evidence of dampness in the living room or kitchen, other than a water stain on the kitchen ceiling which is unrelated to this Application. The kitchen has an extractor fan to provide mechanical ventilation. That extractor fan was operational. The kitchen also had a window that opens.

The Main Bathroom

12. The bathroom is internal. It has no windows. It has an extractor fan for mechanical ventilation, but it is not in working order.
13. There are black spots in various locations in the bathroom. Those black spots are consistent with condensation forming, which is unsurprising given the lack of mechanical ventilation in the bathroom to carry away water vapour.

14. At the wall furthest from the door there is a radiator. Beneath the radiator there is evidence of substantial water damage. The damp meter disclosed that the wall is very wet in that location. It was wet to touch.
15. Beneath the toilet bowl, where the base is fitted to the floor, there is a small gap between the ceramic base and the vinyl flooring. Water is pooling in that gap. It was unclear whether this was condensation forming on the outside of the toilet bowl and running down, or whether there was a leak in that location. The Respondent advised that the bath in the main bathroom was used infrequently, and that most bathing takes place in the shower in the en-suite bathroom. That, coupled with the proximity of the toilet to the wetness beneath the radiator (and the dampness in the wardrobe of the second bedroom, which is through the wall from the radiator and which is described below) tend to suggest that further investigation of this area should be undertaken as a priority to establish whether the dampness is from (i) condensation running down from a higher point and pooling at the bottom, or (ii) an escape of water.
16. The Tribunal was directed to the cupboard under the sink. The shelf in the cupboard was wet. When the tap was running, the Tribunal noted that water appeared to be escaping from around the trap fixing, though it was unable to determine from which part. This escape of water did not appear to be contributing to the complaints of damp or mould, but should be investigated and repaired as soon as reasonably practicable.
17. The Tribunal was directed to the carpet in the hall immediately in front of the door to the main bathroom. The carpet was wet. The wetness appeared to be radiating out from the door to the bathroom. There is no obvious source of water in that location. There is a tear in the vinyl flooring approximately behind the door and approximately 18 inches from the threshold of the door. Further investigation of the source of any dampness in that location should be undertaken when reasonably practicable.

The Second Bedroom

18. The second bedroom is used by the Respondent's nine year old daughter. It has one double-glazed uPVC window and one radiator. The window has a trickle vent. The vent was closed at the time of our inspection. The radiator was turned up to four, but the heating did not appear to be on at the time of the Inspection.
19. Black mould was visible on both walls running perpendicular to the window wall. On the wall to the left, the Respondent confirmed that her daughter's bed is usually kept against that wall. The bed had been pulled out from the wall for our Inspection. The black mould was just above the skirting board, and most prevalent near to the window wall, decreasing in area as it moved towards the hall.
20. On the wall to the right, just above the skirting board, the black mould was visible on an area that was not typically covered by furniture. That wall was on the opposite side from a common area, which appeared to be a locked

cupboard under the common stairwell. Access was not available to that area for inspection. Further investigation should be considered to determine whether there is water ingress from the common area, or whether the common area is a "cold space" making the formation of condensation on Property side of the wall more likely.

21. Damp meter readings of both walls disclosed very high damp readings. The walls were wet to touch at a low level. The readings decreased high up the wall.
22. The Tribunal was directed to the fitted wardrobe. The back wall of the wardrobe, at a lower level, was wet to touch. The damp meter returned a high dampness reading. There was visible water damage to the wall. The carpet inside the wardrobe was wet to touch. The communal soil stack was located in the wardrobe and boxed in. Given the proximity of water and foul water pipes to this area, together with that being the wall shared with the main bathroom, further investigation should be undertaken as a priority to determine whether there is an escape of water in that location, or whether it is the result of condensation from either side.

The Master Bedroom

23. The master bedroom only had one area of localised dampness. This was located on the wall shared with the second bedroom. Black mould had formed on this wall, just above the skirting board, in a peculiarly square shape. Damp meter readings in that area were high.
24. There was no evidence of dampness in the en-suite, nor in the master bedroom immediately adjacent to the door to the en-suite, nor in the fitted wardrobe that backs on to the en-suite. The extractor fan in the en-suite was also not in working condition at the date of inspection, and there is therefore no mechanical ventilation in that space either. The en-suite is also internal, meaning that it has no windows.

External Areas

25. The front elevation faces onto Petershill Road. The Juliet balcony can be seen on that elevation. Immediately to the left of the Juliet balcony is a rainwater downpipe. The downpipe is substantially broken for the bottom two and half metres or so. Water will be escaping in that location. The downpipe is fitted to exposed brick. The bricks were damp in that location. There was also evidence of previous fittings for the Juliet balcony in that brickwork that had not been sealed over.
26. The rear elevation faces onto the car parking area for the Property, and the other flats in the block and neighbouring blocks. The two bedrooms are on that side. The brickwork beneath the window of the second bedroom was visibly wet at a low level. Further investigation would be merited to establish whether the dampness in the second bedroom is being caused by rising dampness in the wall beneath the second bedroom window.

The Hearing

27. The Hearing itself took the form of a focused discussion on the issues affecting the case.
28. Mr Mathie spoke to the Applicant's position. In advance of the Hearing, Mr Mathie had emailed the Tribunal with a note of the Applicant's attempts, and difficulties, in arranging access for inspection and repair since the Case Management Discussion. He also made reference to a report from Allied Surveyors, which had apparently determined that any black mould in the Property had been caused by condensation due to the Respondent's use of the Property. When asked why the report had not been produced to the Tribunal, Mr Mathie advised that the report had indicated a number of wants of repair to be addressed, and he did not wish for the Respondent to use that as a "shopping list" of issues to raise to delay proceedings further. He had also misunderstood the purpose of the Inspection, which he believed was to allow the Tribunal to conclusively determine what the cause of any mould in the Property was.
29. Mr Mathie reiterated the Applicant's position as previously outlined at the CMD. The Applicant no longer wishes to let out the Property, which had become a nuisance property for her. The Respondent had been persistently late in paying rent, but had not paid rent since December 2023. This was causing financial difficulties for the Applicant and her husband. There were ongoing financial obligations associated with the Property, including mortgage payments and factoring fees, that the Applicant required to service whilst rent was not being paid. Mr Mathie did not have details to hand, but his recollection was that the mortgage was interest only and the current deal is due to expire in or around March 2025. Mr Mathie also spoke to a breakdown of the relationship between the Parties. Mr Mathie confirmed that he had always endeavoured to be polite and civil towards the Respondent, but he found her challenging to deal with. That difficulty was typified by what he described as "phantom repairs", being reports of wants of repair that did not appear to be necessary. He also spoke of difficulties obtaining access, noting that it took two months to arrange access for Allied Surveyors.
30. The Respondent lives at the Property with her nine-year-old daughter. The Respondent's daughter attends primary school in Robroyston. Both the Respondent and her daughter suffer from asthma. The Respondent also suffers from ADHD and autism. She attends Springpark Health Centre in Possilpark for medical support, including psychiatric support. She also accesses a support group for single parents in Glasgow City Centre. She is able to access those services by taxi or by a local bus service.
31. The Respondent's mother and step-father live approximately ten minutes away. Her aunt lives in Moodiesburn. She relies on both her mother and aunt for support. In particular, the Respondent requires one of them to be present when someone unknown to the Respondent attends the Property, such as

building contractors. Both her mother and aunt work, meaning that they need to arrange time off to provide support to the Respondent.

32. The Respondent conceded that there had been delays in providing access for investigations and repairs at the Property. There were two reasons for that: firstly, the Respondent needed either her mother or aunt to be present for support, as outlined above; and, secondly, the Respondent did not want the wants of repair to be remedied before the Tribunal had an opportunity to carry out its inspection. In any event, her position was that the Property suffered from black mould and dampness due to the Applicant's failure to repair the Property, and she was withholding rent as a consequence. The Applicant advised that she was paying her rent into a separate bank account with Monzo Bank, pending completion of repairs.
33. However, perhaps most informative for the Tribunal's determination was the Respondent's revelation that she no longer wished to live in the Property. The relationship between her and the Applicant had broken down irreparably. The Property was unsafe to live in. She wanted to be rehomed, but had been told by the local authority that it would not rehome her unless and until an eviction order was granted. If the Tribunal was minded to grant the order, the Respondent's intention would be to seek support with rehoming from the local authority.

Decision

34. In terms of section 33 of the Housing (Scotland) Act 1988:-

"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;
 - ...
 - (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 ish 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.”
35. As already identified, the Respondent concedes that the appropriate notices have been given. The only question for the Tribunal is whether it is reasonable to make an order for possession. The Tribunal’s role in considering reasonableness in these circumstances is, as it is for any other court or tribunal, “to take into account all relevant circumstances as they exist at the date of the hearing... in... a broad commonsense way as a man of the world, and come to [a] conclusion giving such weight as [it] thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for [it] to exclude from [its] consideration matters which [it] ought to take into account.” (*Cumming v Danson*, [1942] 2 All ER 653 at 655).
36. Having regard to all of the evidence available to it, the Tribunal unanimously determined that it was reasonable to grant the eviction order. Irrespective of who is responsible for the presence of dampness and mould in the Property, it is there. The health implications of black mould are well known, and it is sufficient to say that its presence in the Property, and in particular in the second bedroom, gives rise to concern. Neither the Respondent nor her daughter access services that are immediately local, and their support network is similarly spread around the Glasgow area. It does not appear that a move to another relatively close location within Glasgow would cause any detriment to their ability to attend those services that they access. The relationship between the Parties has irreparably broken down. The Applicant wishes to sell the Property. The Respondent wants to move. The continuation of this dispute between them is having a negative impact on both their mental health. All of those factors taken together tends to support a finding that it is reasonable to grant the eviction order. It is on that basis that the Tribunal reached its decision.

Post-script

37. No Application was before the Tribunal to determine whether the Respondent was legitimately withholding her rent, or whether payment should be ordered. Similarly, the Tribunal was not required to make a determination regarding whether the Property met the landlord’s repairing standard. However, given that the Property has been inspected, and so much consideration has been given to those matters, the Tribunal wishes to make a number of observations to the Parties to assist in reaching a sensible resolution to any outstanding payment questions:-
- a. The Property is in disrepair insofar as the extractor fans in both bathrooms are not in working order, and the trap fitting beneath the sink in the main bathroom is leaking. Both of those appear to be repairs that are the Applicant’s responsibility.
 - b. Some of the mould growth in the Property (specifically in the hall and main bathroom) appear to be environmental in nature, which is to say

caused by condensation due to living conditions. However, it is difficult to criticise the Respondent for that in circumstances where the only means of ventilating the main bathroom is not in working order.

- c. Further investigation, including intrusive investigation, is required to determine the causes of dampness in the living room, master bedroom, second bedroom, and bathroom. The Tribunal observed conditions which may indicate rising dampness, water ingress and escape of water in the relevant locations. It is also noteworthy that there is limited evidence of dampness and mould in the master bedroom, notwithstanding the lack of mechanical ventilation in the en-suite, suggesting that some of the prevalence of black mould in other areas may have a non-environmental cause.
- d. There are communal repairs required which may be contributing to the dampness. It is likely within the Applicant's power to compel the completion of the repairs with all owners of the common parts.
- e. The Respondent could make better use of the Property to improve ventilation and reduce the risk of condensation. In particular, trickle vents in windows and doors should be kept open, and if weather conditions permit the windows and doors should be opened from time to time to maximise ventilation. The Property should also be kept heated to avoid surfaces becoming cold and promoting condensation of water vapour on them.
- f. Given that the Applicant was aware of the presence of dampness and mould in the Property, but did not take expeditious steps to investigate and remedy wants of repair which were likely contributing to condensation forming in relevant areas (including, in particular, the failure by the Applicant to provide mechanical ventilation to the bathrooms), the Respondent was likely entitled to withhold rent pending completion by the Applicant of relevant repairs.
- g. By deliberately delaying the completion of repairs, the Respondent likely lost her right to withhold rent to force completion of repairs.
- h. Whether the Respondent has any justifiable claim against the Applicant for an abatement of rent for any breach by the Applicant of her repairing obligations and duties is beyond the remit of this Tribunal. We expressly make no observation in that regard.

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.

Andrew Upton

19 August 22, 2024

Legal Member/Chair

Date