

**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 (“the 1988 Act”) and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)**

**Chamber Ref: FTS/HPC/EV/24/1175**

**Re: Property at Flat 3/1, 21 Aberfoyle Street, Glasgow, G31 3RW (“the Property”)**

**Parties:**

**Mr Grant Martin, 2/2 206 Finlay Drive, Glasgow, G31 2SL (“the Applicant”)**

**Mr Mark Miller, Flat 3/1, 21 Aberfoyle Street, Glasgow, G31 3RW (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Jane Heppenstall (Ordinary Member)**

**Decision**

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

**Background**

1. The application received on 11 March 2024 sought an eviction order under Rule 66 on the basis that the Short Assured Tenancy had been brought to an end by service of the relevant notices. Supporting documentation was submitted, including a copy of the tenancy agreement, AT5, Notice to Quit, Section 33 Notice and section 11 Notice to the local authority. The Short Assured Tenancy began on 19 October 2016. The original landlord in terms of the tenancy was Caversham Management Ltd. The Applicant acquired title to the Property on or around 31 August 2022 after purchasing it at auction with the Respondent as sitting tenant.
2. Following initial procedure, the application was accepted by the Tribunal on 4 April 2024 and notified to the Respondent by Sheriff Officer on 15 July 2024. In terms of said notification, representations were to be lodged by 2 August 2024.

3. Written representations were lodged late on behalf of the Respondent on 9 August 2024. These were circulated to the Applicant and Tribunal Members on 14 July 2024. On the evening of 15 August 2024, the Applicant responded to the representations and his response was circulated to the Respondent's representative and the Tribunal Members on 16 August 2024, prior to the CMD.

### **Case Management Discussion**

4. The Case Management Discussion ("CMD") took place by telephone conference call on 16 August 2024 at 2pm. Only the Respondent's representative, Ms Lyndsey McBride, of Govanhill Law Centre was present at 2pm. On the instructions of the Legal Member, the Clerk made contact with the Applicant, Mr Grant Martin, by telephone to ascertain if he was intending to join the CMD, given the terms of the further representations he had lodged. Mr Martin then joined the CMD which commenced slightly later than scheduled as a consequence.
5. Following introductions and introductory comments by the Legal Member, Ms McBride confirmed that the Respondent was not intending to join the CMD due to work commitments and that she had had sight of the Applicant's representations circulated earlier today. In explanation for the representations on behalf of the Respondent being lodged late, Ms McBride explained that, although Govanhill Law Centre had been dealing with the Respondent since notice was served on him, it was a colleague who was not a legal adviser who dealt with the Respondent initially. The matter was only passed to Ms McBride later and she required to go over all the paperwork, take instructions from the Respondent and look into the rent arrears side of things. The Tribunal accepted the position.
6. Ms McBride confirmed, as per the written representations lodged, that the Respondent was not opposing the eviction, but was seeking a three month extension on the normal timeframe for eviction to allow the Respondent additional time to obtain alternative accommodation. Mr Martin confirmed, as per his further written representations, that such an extension was opposed.
7. Ms McBride explained that following contact by the Applicant to the Respondent, the Applicant originally served invalid notices on the Respondent. Govanhill Law Centre correctly advised the Respondent that he did not require to leave the Property until an eviction order was granted. The Respondent did attempt to find alternative accommodation but has found the private lets market quite difficult recently. He has also had no help from the local authority homeless team who are reluctant to take on an application until an eviction order has been granted. The Respondent would prefer to avoid short-term temporary placements, which may involve hotel-type accommodation, as he would be wholly or partially responsible for the rent as he is working and these rents tend to be very high. Ms McBride referred to the written submissions and text messages between the parties which are lodged with the Tribunal. She advised that the tone and wording of the messages put pressure on the

Respondent and caused him stress which led to him being off work. Although he has now returned to work, the Respondent stated that the stress caused to him impacted negatively on his ability to seek alternative accommodation. Ms McBride advised that she does not know the Respondent's specific occupation but as he has referred to working on "sites", she thinks it is likely in construction. She thinks his hours and earnings vary, depending on the amount of work available but thinks he is currently working around 40 hours per week at around £15 per hour. He is single with no dependents and is 38 years old. He has looked at private lets and she thinks also Housing Associations but is unaware as to whether he has actually made an application(s) for social housing at the present time. As to the rent arrears side of things, Ms McBride confirmed that there was a period where the Respondent did not pay rent, following the Applicant taking over the tenancy, but a lump sum of £1,300 has recently been paid towards the arrears, on Ms McBride's advice that the Respondent was still liable to pay his rent. The arrears have been brought down to around £975 and it is the Respondent's intention to pay off the outstanding balance. Ms McBride submitted that it is still reasonable, in these circumstances, for the Respondent to request a delay in the eviction.

8. Mr Martin advised that he personally does not believe the Respondent's explanation for not paying his rent. He considers that this was a conscious decision on the part of the Respondent who, according to his representative, appears to be earning around £600 per week. Mr Martin stated that he thought he had a gentleman's agreement with the Respondent and that he showed him goodwill and was very accommodating of him. He mentioned that when he first saw the condition of the interior of the Property, it was in poor condition and it was clear that the Respondent had been smoking in the Property which was not permitted in terms of the tenancy terms. The Respondent initially said he would move out but then took advantage of Mr Martin's naivety and inexperience as a landlord. Mr Martin explained that he had never had to deal with a tenant before and had initially made the mistake of trying to build a personal relationship with the Respondent rather than a professional one. He admitted that when the Respondent subsequently refused to leave, he did send some messages that he is not proud of. However, the Respondent's first claim of harassment was not made until 28 February 2024, almost two months after he had stopped paying his rent. The rent stopping in December 2023 did coincide with the timing of the notices being served. Mr Martin confirmed that there has been a very recent payment of £1,300 towards the arrears and that they have been reduced to £975 but submitted that there was no justification for the Respondent having stopped payments in the first place.
9. Mr Martin explained that the main reason for him opposing an extension to the eviction timeframe is that he is currently financially crippled and that it would be a devastating blow if he had to wait another three months. He explained that he has already been waiting about a year and a half to recover the Property. He looked up how long it would be likely to take for him to obtain an eviction order from the Tribunal and the timescale quoted was 8-10 weeks. However, it has actually taken more like 8-10 months so far. He explained that he had purchased the Property at auction and had initially intended to obtain a 'buy to let' mortgage. However, he was subsequently unable to do so as the condition

of the Property was not good enough to get the necessary EPC rating for a mortgage. He was left with no option but to take an expensive short-term loan to buy the Property or would have lost the large deposit he had paid to secure it at auction. If he had known how long this process would take, he would have 'cut his losses' at the outset and put the Property back to auction. The loan is now costing him £880 per month and he also discovered that there are factoring fees of £75 per month which he had not known about. The rent on the Property is very cheap, at £325 per month, so he is was losing £600 per month even before the Respondent stopped paying rent. Mr Martin conceded that the original background was not the Respondent's fault. However, the Respondent has been aware of the position for some considerable time and has, in Mr Martin's view deliberately taken advantage of the situation and Mr Martin's inexperience. Mr Martin feels the Respondent has had more than adequate time to find a solution to his housing situation and cannot help but think that he is delaying things as much as possible to take advantage of the very low rent he is paying of £325 per month. Mr Martin confirmed that his main source of income is from his own employment as a software engineer but that he is struggling to pay all his bills as a consequence of losing £600 every month on this Property. He confirmed that he needs to recover the Property as soon as possible to completely refurbish it, including putting in new windows and central heating, then to re-finance the Property and look to renting it out in future at a much higher rental to try and recoup some of his losses. Mr Martin confirmed that his original plan had been to try and expand to acquire other properties to let out but, due to what has happened with this one, this may not be possible and this remains the only property that he lets out.

10. In response to Mr Martin's submissions, Ms McBride clarified that the Respondent had last paid his regular rent on 2 January 2024, not December 2023 and that his lump sum payment towards the arrears of £1,300 was made on 9 August 2024, in accordance with her advice to the Respondent. She reiterated that the Respondent also intends to clear off the balance of the remaining arrears.
11. The Tribunal Members adjourned to discuss the matter in private and, on reconvening, advised parties that the Tribunal's decision was that the eviction order should be granted and that this should not be subject to the extension sought on behalf of the Respondent. It was explained that the normal timescale for enforcement of the order would apply and the process and timescales were briefly explained to Mr Martin. Parties were thanked for their attendance.

### **Findings in Fact**

1. The Applicant is the current owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Short Assured Tenancy which commenced on 19 October 2016.
3. The rent is £325 per calendar month.

4. The Applicant ended the contractual tenancy by serving on the Respondent a Notice to Quit and Section 33 Notice dated 14 December 2023 and served by Sheriff Officer on 21 December 2023, specifying the end of the notice period as 28 February 2024, an ish date in terms of the lease. Both notices were in the correct form, provided sufficient notice and were served validly on the Respondent.
5. The Respondent has remained in possession of the Property following expiry of the notice period.
6. This application was lodged with the Tribunal on 11 March 2024, following expiry of the notice period.
7. The Respondent did not contest the application, but sought an extension of three months on the eviction date to allow him more time to find alternative accommodation.
8. The Applicant opposed any extension.
9. The Respondent is a 38-year old single male, currently working full-time hours and earning around £600 per week.
10. The Respondent has not yet been able to source alternative accommodation.
11. The Respondent stopped paying rent following his last rental payment on 2 January 2024 and significant rent arrears accrued.
12. The Respondent paid £1,300 towards the rent arrears on the advice of his representative on or around 9 August 2024, reducing the outstanding rent arrears to in or around £975.
13. The Applicant has a shortfall of around £600 every month in respect of the Property, being the difference between his monthly loan payments and the monthly rental.
14. The Applicant is experiencing financial difficulties and requires to recover possession of the Property as soon as possible to extensively refurbish the Property in order to re-finance it.

### **Reasons for Decision**

1. The Tribunal was satisfied that pre-action requirements including the service of the Notice to Quit and Section 33 Notice in terms of the 1988 Act had been properly and timeously carried out by the Applicant prior to the lodging of the Tribunal application.

2. Section 33(1) of the Act states that an order for possession shall be granted by the Tribunal if satisfied that the short assured tenancy has reached its finish; that tacit relocation is not operating; that the landlord has given to the tenant notice stating that he requires possession of the house; and that it is reasonable to make an order for possession. The Tribunal was satisfied that all requirements of Section 33(1) had been met.
3. As to reasonableness, the Tribunal considered the background to the application, the written representations lodged on behalf of both parties and the oral submissions of the Applicant and the Respondent's representative at the CMD. The Tribunal was satisfied that the Applicant's reason for wishing to recover possession of the Property was that he required to fully refurbish the Property in order to improve its condition in order to obtain more affordable mortgage finance over it. The Tribunal was also satisfied that the Applicant was experiencing financial difficulties, primarily due to the substantial difference between his current monthly outgoings in respect of the Property and the rental income. The Tribunal noted the Respondent's personal and financial circumstances, that he had had the benefit of legal advice and did not contest the eviction. In these circumstances, the Tribunal considered that it was reasonable to grant the eviction order sought.
4. The Tribunal thereafter gave careful consideration to the Respondent's request for an extension of three months on the eviction order being implemented. This was strenuously opposed by the Applicant. Both parties had provided detailed written representations and supporting documentation in advance and the focus of discussions at the CMD was on the question of an extension, given that the eviction itself was not opposed. The Applicant and Ms McBride were given the opportunity to comment fully on their respective positions as regards an extension and the Tribunal Members asked each a number of questions. Whilst the Tribunal noted that the Respondent had been resident at the Property for a number of years, that the tenancy was being brought to an end through no fault of his own and that he has not yet secured alternative accommodation for himself, the Tribunal considered these factors to be outweighed by the financial pressures being experienced by the Applicant which the Tribunal was satisfied have been exacerbated by the delays in him being able to recover possession of the Property and also by the Respondent ceasing to pay rent for a period of some months, which the Tribunal noted had occurred shortly after (valid) formal notices were served upon him. The Applicant had purchased the Property at auction with the Respondent as a sitting tenant and had made the Respondent aware of his intentions shortly thereafter, in or around October 2022. Initially, the Respondent had indicated his intention to start looking for alternative accommodation. It appeared that relations between the parties had initially been relatively amicable but had subsequently deteriorated and the matter had developed into a 'stalemate' situation. As the Respondent's agent had stated, the Respondent did not legally require to remove from the Property until an eviction order had been granted. However, the Respondent had been aware of the Applicant's position for a considerable period of time and that the most recent notices served in December 2023 were valid. The Tribunal considered that the Respondent had already had sufficient time to seek alternative accommodation and ought to

have been aware that there was no guarantee that the Tribunal would extend the timeframe for the eviction order being implemented. Whilst not condoning the tone and content of some of the Applicant's text messages, which the Applicant himself conceded that he was not proud of, the Tribunal was not persuaded that these messages amounted to "harassment" of the Respondent. Nor was there any material before the Tribunal to support the Respondent's position that these messages had impacted him such that his efforts to obtain alternative accommodation had been hindered. The Respondent appears to be working full-time hours and is currently in receipt of a reasonable income. He is a single man with no dependents. The eviction order is being granted against the Respondent on a 'no fault' ground which should not, of itself, exclude him from being considered for social housing, should he decide to apply for that. In all these circumstances, the Tribunal was not persuaded to exercise its discretion in terms of Rule 16A(d) of the Regulations to grant the extension sought on behalf of the Respondent. On balance, the Tribunal considered that the Applicant should be able to recover possession of the Property with the usual timescales applying.

### **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.**

# N Weir

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Legal Member/Chair

**16 August 2024**  
Date