



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 Housing (Scotland) Act 1988 (“the 1988 Act”)**

**Chamber Ref: FTS/HPC/EV/24/0672**

**Re: Property at 91 Avenel Road, Glasgow, G13 2PH (“the Property”)**

**Parties:**

**Janice Elizabeth Loughran or Allan, 63 Haining Road, Renfrew, PA4 0AJ (“the Applicant”)**

**Elizabeth McDowall, 91 Avenel Road, Glasgow, G13 2PH (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and Ann Moore (Ordinary Member)**

**Decision (in absence of the Respondent)**

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

**Background**

- 1. The Applicant seeks an order for possession in terms of Section 33 of the 1988 Act. A tenancy agreement, AT5 Notice, Notice to Quit, Section 33 Notice, certificate of posting, and Section 11 Notice were lodged with the application.**
- 2. A copy of the application was served on the Respondent by Sheriff Officer. Both parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 8 August 2024 at 2pm and that they were required to participate.**
- 3. The CMD took place on 8 August 2024. The Applicant participated. The Respondent did not participate and did not contact the Tribunal prior to the CMD.**

## **The Case Management Discussion**

4. The Tribunal noted that a post office certificate of posting had been submitted with the Notice to Quit and section 33 notice. However, the Royal Mail website had not been updated with delivery information. Mrs Allan told the Tribunal that the Respondent contacted her on 5 August 2023 after she had received the notices to ask about them.
5. Mrs Allan told the Tribunal that the Respondent is still living at the property with her partner and her daughter who is about 18 years old. She does not know if any of them are working as the rent is paid direct by Housing Benefit. It is up to date. She also told the Tribunal that she owns a number of rental properties. She decided to seek recovery of possession because of antisocial behaviour by the tenant and her partner. She has received numerous complaints from neighbours about shouting and fighting within the property. The police have attended on many occasions and arrested the partner. She has been told that there is noise on a nightly basis. These complaints have been ongoing for some considerable time. There is also an accumulation of rubbish at the back of the property which the tenant has failed to remove despite requests to do so. Mrs Allan also told the Tribunal that there is a history of antisocial behaviour. Quite early in the tenancy the Respondent's partner was arrested for growing cannabis at the property. She did not seek recovery of possession at that point because the Respondent had children in the house, and she decided to give her another chance. However, she is concerned about the neighbours who have also stated that they believe that the Respondent is dealing drugs from the house. The tenant has also failed to cooperate with requests for access for gas safety inspections. In response to questions from the Tribunal, Mrs Allan advised that her husband is working and there is no mortgage over the property. The sole reason for seeking possession is the behaviour of the tenant and the impact on the neighbours.

## **Findings in Fact**

6. The Applicant is the owner and landlord of the property.
7. The Respondent is the tenant of the property in terms of a short assured tenancy agreement.
8. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondents on 3 August 2023.
9. The Respondent resides at the property with her partner and adult daughter.
10. The Applicant has received numerous complaints about antisocial behaviour at the property by the Respondent and her partner.
11. The Applicant wishes to recover possession of the property because of the antisocial behaviour complaints and the failure by the Respondent to comply

with tenancy obligations in relation to access for safety checks and the condition of the property.

## Reasons for Decision

12. The application was submitted with a short assured tenancy agreement and AT5 Notice. The initial term of the tenancy was 12 January 2010 until 11 January 2011.
13. Section 32 of the 1988 Act states “(1) A short assured tenancy is an assured tenancy - (a) which is for a term of not less than 6 months; and (b) in respect of which a notice is served as mentioned in subsection (2) below. (2) The notice referred to in subsection (1)(b) above is on which – (a) is in such form as may be prescribed; (b) is served before the creation of the short assured tenancy; (c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under the tenancy; and (d) states that the assured tenancy to which it relates is to be a short assured tenancy.”
14. The Tribunal is satisfied that the tenancy agreement between the parties was for an initial term of 12 months and therefore meets the requirements of Section 32(1) of the 1988 Act. The Tribunal is also satisfied that an AT5 Notice was given to the Respondent prior to the creation of the tenancy. In the circumstances, the Tribunal determines that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act.
15. From the documents submitted with the application, and information provided at the CMD, the Tribunal is satisfied that the Applicant served a Notice to Quit and Section 33 Notice on the Respondent on 3 August 2023. The Notice to Quit called upon the Respondent to vacate the property on 12 January 2024, the day following an ish date. The Notice contains the information prescribed by the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and complies with the terms of Section 112 of the Rent (Scotland) Act 1984. The Tribunal is satisfied that the Notice to Quit is valid and that the tenancy contract has been terminated. The Section 33 Notice was also served on 3 August 2023 and gave the Respondent more than 2 months notice that the Landlord wished to recover possession of the property. A Section 11 Notice was submitted with the application, with evidence that it was sent to the Local Authority. The Applicant has therefore complied with Section 19A of the 1988 Act.
16. Section 33 of the 1988 Act, (as amended by the Coronavirus (Recovery and Reform) (Scotland) Act 2022) states “(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 finish; (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” Subsection 2 states “The period of notice to be given under subsection (1)(d) above shall be – (1) 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”. The Tribunal is satisfied that the tenancy has reached its finish and, as the Applicant has served a valid Notice to Quit, that tacit relocation is not operating. A valid notice in terms of section 33(d) has also been served on the Respondents, giving at least two months’ notice that the Applicant required possession of the property.

17. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession, in terms of Section 33(e) of the 1988 Act.

18. The Tribunal had regard to the following: -

(a) The Respondent did not attend the CMD or indicate whether the application is opposed.

(b) Although the rent is up to date, the Applicant has received numerous complaints about antisocial behaviour at the property from other residents. This includes noise, particularly at night, shouting, fighting and failing to dispose of rubbish. The Police have attended.

(c) The Respondent has been warned about the behaviour at the tenancy.

(d) The Respondent has failed to provide access for essential gas safety checks.

19. For the reasons specified, the Tribunal is satisfied that it would be reasonable to grant the application.

20. The Tribunal is satisfied that the Applicant has complied with the provisions of the 1988 Act and that it would be reasonable to grant the order.

## **Decision**

21. The Tribunal determines that an order for possession of the property should be granted against the Respondent.

## **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.**

**Josephine Bonnar, Legal Member:**

**Date: 8 August 2024**