



**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/24/2299**

**Re: Property at Flat 1/R 6 Hartfield Gardens, Dumbarton, G82 2DE (“the Property”)**

**Parties:**

**Mrs Vanda Pedreschi, Church House, Church Street, Uckfield, East Sussex, TN22 1BJ (“the Applicant”)**

**Mrs Susan Smyth, Miss Amanda Smyth, Flat 1/R, 6 Hartfield Gardens, Dumbarton, G82 2DE; Flat 1/R 6 Hartfield Gardens, Dumbarton, G82 2DE (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Gerard Darroch (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 20 May 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 17 February 2015.

2. Following initial procedure, the application was accepted by the Tribunal on 1 June 2024 and notified to the Respondent by Sheriff Officer on 2 September 2024. Representations were to be lodged by 19 September 2024.
3. On 12 July 2024, a letter was submitted by the Applicant requesting an early date for a Case Management Discussion (“CMD”) to take place, given the background circumstances and urgency with regard to the Applicant’s husband’s ill health. The Tribunal Administration responded, explaining that an early date could not be accommodated due to the volume of cases at the present time.
4. Written representations were lodged by the second-named Respondent, Miss Amanda Smyth, by email on 4 September 2024, stating that she had moved out of the Property in 2019, that the Applicant’s letting agent had been informed of this in August 2019 and again in March 2024 and that she does not therefore consider that she should be a party to these proceedings. Written representations were also lodged by the first-named Respondent, Mrs Susan Smyth, by email on 6 September 2024 but is unable to get an appointment with Govan Law Centre before 3 October 2024 so would be unable to submit a response before then.
5. On 5 and 6 September 2024, further documentation was lodged on behalf of the Applicant by email, namely letters from the Applicant’ estate agent and her husband’s GP and it was confirmed that the Applicant herself would also be attending the CMD.
6. On 9 September 2024, further documentation was lodged by email by the second-named Respondent in support of her representations lodged on 4 September 2024, namely copy messages between the Respondent and the Applicant’s letting agent concerning the second-named Respondent removing from the Property in 2019.
7. On 12 September 2024, the Applicant’s letting agent emailed a response to the above communication, explaining that they had received advice from SAL and been informed by the Tribunal previously that, unless a tenant had formally been removed from the tenancy agreement, or a new tenancy agreement entered into, an eviction application must include all stated tenants. They had also tried repeatedly, but unsuccessfully, to get a forwarding address for the second-named Respondent from the Respondent.
8. On 13 September 2024, the first-named Respondent emailed the Tribunal, requesting an extension of the time for lodging written representations and a postponement of the CMD, on the basis that she was unable to get an appointment with Govan Law Centre until 3 October 2024. The Tribunal considered the postponement request and refused same on 17 September 2024 but extended the timeframe for written representations until 7 October 2024. The reasons for refusal were explained.

9. On 4 October 2024, the first-named Respondent's representative from Govan Law Centre confirmed that they had only met with her the day before and sought a postponement of the CMD on the basis that the particular solicitor was due to be on holiday on the date of the CMD and there were no other solicitors available to attend. The Tribunal considered this postponement request and refused same, again with an explanation of the reasons for refusal. A copy of the refusal to the first-named Respondent's previous postponement request was attached and the Tribunal again invited written representations be lodged by close of business on 7 October 2024. This decision was intimated to all parties on the morning of 7 October 2024. No further written representations were received.

### **Case Management Discussion**

10. The Case Management Discussion ("CMD") took place by telephone conference call on 9 October 2024, initially commencing at 10am but due to technical difficulties experienced with the telephone-conferencing facilities, recommenced at 10.30am. The CMD was attended by the Applicant, who was accompanied by her husband and represented by Mrs Michelle Gilmour, Letting Agent of McArthur Stanton, and by Miss Rachel Moon of Govan Law Centre on behalf of the first-named Respondent. Neither Respondent was present.
11. Ms Moon was asked to state the position of the first-named Respondent, Mrs Smyth, in respect of the eviction application. Miss Moon stated that Mrs Smyth now lives alone at the Property and has now had the benefit of legal advice. She is not opposing an eviction order being granted but was looking for an extension of 12 weeks on the implementation date of the eviction. The reason for requesting an extension was to allow Mrs Smyth to purchase an alternative property to move into. She has mortgage finance in place and is hoping to secure a property soon. She was considering her options over recent months and was previously advised by the local authority homeless team that she would not be able to obtain accommodation through them. The 12 weeks sought is to allow her time to purchase a property and also to spend Christmas in her current home.
12. The Applicant, Mrs Pedreschi, and her representative, Mrs Gilmour, were asked if the Applicant was agreeable to the requested extension. There followed a fairly lengthy discussion about the process involved, the timescale for eviction and the situation in the event that Mrs Smyth does not vacate the Property within the 12 week period. It was apparent that Mrs Pedreschi had concerns regarding further delay, due to her husband's health issues being the reason that they require to sell the Property as soon as possible. Mrs Pedreschi mentioned the timeline of events so far, going back to August 2023 when they first approached Mrs Smyth about their need to sell and the reasons for this. She said there had been numerous conversations about the matter and that she does not really think it fair that Mrs Smyth is seeking to delay matters and that they were unaware until now that this was going to be her position. Mrs Pedreschi stated that she would, however, like to take away the stress of the situation and essentially wished reassurance that, if an extension was agreed today, Mrs Smyth would then do the honourable thing and vacate the Property within the 12 week period.

13. The Legal Member explained the normal timescale for an eviction order being implemented, without any extension. She stated that the Tribunal would not be involved in the enforcement of any order and that the Applicant would require to take her own advice on that side of things. However, the Legal Member explained the process which would follow, if matters were agreed on these terms, and that the order would specify an exact date as to when the order would be enforceable. It was further explained that, although a decision would be made today, the actual Order would not follow until the 30-day appeal period had expired but, once the Order is issued, the Applicant would then be able to seek advice and instruct Sheriff Officers at that stage.
14. Miss Moon was asked if she had anything further to add in view of the concerns expressed by Mrs Pedreschi. Miss Moon reiterated that Mrs Smyth, having now obtained legal advice, has decided not to take the matter to an Evidential Hearing on the reasonableness of an eviction order being granted, given that she had originally wished to continue residing in the Property. Miss Moon stressed that Mrs Smyth had been looking at her various options since notice was served, such as contacting the local authority and housing associations and considering other private lets. She has now secured finance and settled on purchasing an alternative property and intends to move out within the 12 week period sought.
15. Mrs Pedreschi, supported by Mrs Gilmour, confirmed that, in these circumstances, she was prepared to agree to the 12-week extension sought.
16. The Tribunal Members adjourned to discuss the application in private and, on re-convening, it was stated that they were in agreement that the application was in order and should be granted, subject to a 12 week extension in respect of the eviction date. It was explained that, as exactly 12 weeks from today was 1 January 2025, the Tribunal had decided, for practical reasons, to extend the period by a further few days until Monday 6 January 2025. Parties were thanked for their attendance and apologies made again to parties present for the technical issues and delays experienced at the outset of the CMD.

## **Findings in Fact**

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the joint tenant of the Property by virtue of a Short Assured Tenancy which commenced on 17 February 2015.
3. The second-named Respondent had vacated the Property in 2019 and the tenancy deposit scheme records amended accordingly, but the original tenancy agreement was not formally amended nor a new tenancy agreement entered into between the Applicant and the first-named Respondent.
4. The Applicant ended the contractual tenancy by serving on both Respondents a Notice to Quit and Section 33 Notice dated and posted on 7 March 2024 and

delivered to the Respondents on 8 March 2024, specifying the end of the notice period as 17 May 2024.

5. Both notices were in the correct form, provided sufficient notice and were served validly on the Respondents by Recorded Delivery/'signed for' post.
6. The first-named Respondent has remained in possession of the Property following expiry of the notice period.
7. This application was lodged with the Tribunal on 20 May 2024, following expiry of the notice period.
8. The first-named Respondent did not contest the application, but sought an extension of the eviction date to allow her to secure alternative accommodation.
9. The Applicant agreed to the extension sought.

### **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 and supporting documentation lodged previously on behalf of both parties and the oral submissions of the Applicant, her representative and the first-named 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 she required to sell the Property in order to pay for medical treatment for her husband who has serious health issues. The Tribunal noted that the Applicant had explained her position to the first-named Respondent in advance of serving formal notice. The Tribunal also took into account the circumstances of the first-named Respondent, that she had lived in the Property for a lengthy period, had originally wanted to continue living in the Property and now requires to secure alternative accommodation to meet her needs. It was noted that she had looked at alternative housing options but has now secured mortgage finance to enable her to purchase a property of her own. The first-named Respondent took no issue with the application. She had had the benefit of legal advice and did not contest the eviction. Although

the Applicant had initial concerns about agreeing to the extension sought, following further discussion, agreed to same.

4. In all of the circumstances, the Tribunal considered that it was reasonable to grant the eviction order sought, subject to an agreed extension of the implementation date of the eviction order to just over 12 weeks from today's date, namely 6 January 2025, to give additional time for the first-named Respondent to secure alternative accommodation and remove from the Property.
5. The Tribunal paperwork will continue to specify both Mrs Susan Smyth and Miss Amanda Smyth as Respondents in respect of this application as Miss Amanda Smyth technically remains a joint tenant in respect of this tenancy, in terms of the tenancy agreement.

### **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.**

**Legal Member:**

**Date: 09 October 2024**

**N Weir**