

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/23/3052

Re: Property at 0/1 18 Broompark Drive, Dennistoun, G31 2DP (“the Property”)

Parties:

Easilet Investments, 104 Bellgrove St, Glasgow, G31 1AA (“the Applicant”)

Miss Pierrette Tchialu, 0/1, 18 Broompark Drive, Dennistoun, G31 2DP (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 0/1 18 Broompark Drive, Dennistoun, G31 2DP in terms of Section 33 of the Housing (Scotland) Act 1988 be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

1. This is an application for an order for repossession under Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
2. Two Case Management Discussion (“CMD”) were held on 23 January and 29 April 2024. The Respondent’s solicitor had lodged written submissions that the

tenancy between the parties was an assured Tenancy and not a short assured tenancy and that it was not competent to recover possession of the Property in terms of Section 33 of the Housing (Scotland) Act 1988. The Respondent disputed that Sections 32(2)(a) and 32(2)(b) of the 1988 Act had been complied with. The Respondent submitted the application was incompetent and ought to be dismissed. That position was disputed by the Applicant's solicitor who had lodged written submissions with the Tribunal to the effect that the tenancy was a properly constituted short assured tenancy. The Respondent's solicitor lodged further written submissions in support of her position that the action was incompetent as the AT5 was not in the prescribed form and that in any event it had not been served prior to the creation of the tenancy agreement.

3. At the CMD on 29 April 2024 the Applicant was represented by Ms Wooley from Bannatyne Kirkwood France and Company. Mr Friel the Applicant was also in attendance. The Respondent was represented by Ms MacLeod, Solicitor from Shelter Scottish Housing Law Service. The case was heard together for a case for recovery of rent arrears.
4. The Tribunal heard submissions from both parties. Ms Wooley submitted that the tenancy was a properly constituted short assured tenancy and that although the AT5 did not follow the exact form prescribed, all the information on the prescribed form was present. She submitted the Tribunal should take a purposive approach and that the AT5 with the same information, would not render the AT5 invalid and that a reasonable recipient of the AT5 with the same information would understand that what was being offered was a short assured tenancy.
5. Ms Wooley went on to address the issue as to whether the AT5 had been served on the Respondent before the tenancy was created and submitted the Respondent had signed the AT5 at 3.30pm and that the tenancy had been signed by parties at 3.35pm on 31 August 2010. The tenancy agreement which the Respondent signed provided that the Respondent acknowledged receipt of the AT5 prior to the commencement of the tenancy. Whilst the Applicant's agent did not sign the AT5 until 4.35pm she submitted the AT5 had been served on the Respondent and that there was no need for it to be "completed" as submitted by the Respondent. The Respondent had had fair notice that what she was being offered was a short assured tenancy.
6. Ms Wooley also addressed the Tribunal on reasonableness. In short, the Property needed extensive works to comply with the Repairing Standard which could not be carried out with the Respondent living there. Further the Applicant himself intended to live in the Property after the works had been carried out as his own house, which had been demolished, was being rebuilt. In addition the Respondent was in rent arrears with reference to the arrears action.
7. Ms MacLeod submitted that the AT5 was not in the correct form and the tenancy was an assured tenancy. There was no Scottish authority for the purposive approach to be taken and a strict approach should be adopted and referred to the case of *Beattie v Rogers 2016 Hous. L.R.* She submitted that

the equivalent English legislation allows for a form substantially of the same effect as the prescribed form to be used, but that the Assured Tenancies (Forms)(Scotland) Regulations 1988 does not contain any provision that allows for anything other than the actual prescribed form to be used. The Notes of the AT5 were not in boxes in bold and therefore the AT5 was not in the prescribed form. In her submission the Respondent was not put on fair notice that what was being offered was a short assured tenancy.

8. Ms MacLeod further submitted the AT5 was not served on the Respondent before the tenancy was created and submitted for the AT5 to be valid it must be signed by the Landlord. The Applicant's agent did not sign the form until 4.35pm on 31 August 2010 after the Respondent had signed the AT5 and the tenancy agreement. In her submission only service of a completed AT5 form in the prescribed form could make the tenancy a short assured tenancy. Although the Respondent had sight of the AT5 prior to the creation of the tenancy, she submitted the AT5 was incomplete without the Landlord signing and dating it prior to giving it to the Respondent.
9. Ms MacLeod adopted her written submissions on reasonableness. The arrears had been substantially reduced and the Respondent was taking steps to take forward her Housing Benefit appeal with her new agent. She submitted the Applicant had chosen to demolish his own home and if evicted the Respondent would need rehousing with her children. She disputed the Property needed extensive refurbishment or that the works were required. The balance of reasonableness favoured the Respondent.
10. The Tribunal questioned Mr Friel regarding the works to the Property. He explained he had various concerns regarding the state of repair of the Property. During his answers he mentioned he had offered the Respondent rehousing, but that she had refused his offers.
11. The Tribunal decided to proceed to a Hearing for evidence, there being a dispute on the facts of whether extensive refurbishment was required which was central to the Applicant's reasonableness argument. The Tribunal also wished to hear evidence on any offers of rehousing as that could also have a bearing on reasonableness. The Tribunal reserved its decision on the competency of the action until the Hearing.

Pre- Hearing

12. The Hearing was assigned to proceed in person on 18 September 2024.
13. On 9 September 2024 the Tribunal issued a Notice of Direction to the parties requiring the Applicant to lodge any correspondence with regards to any offers of rehousing made to the Respondent and requiring both parties to lodge a List of Witnesses and a List of Authorities.
14. On 11 September 2024 Ms Wooley, the Applicant's solicitor lodged an Inventory of Productions comprising the tenancy agreement, AT5, Section 33 Notice, Notice to Quit, Execution of Service, an asbestos sample report,

quotes from various contractors, a letter regarding change of ownership dated 13 March 2023 addressed to the Respondent, a Notice of Planning Consent issued by East Dunbartonshire Council, an email from Mr Friel to Councillor Carroll, Glasgow City Council dated 21 February 2023 and an email from Mr Friel to the Respondent dated 2 August 2024. She also submitted another Inventory comprising correspondence relating to access issues, which had already been placed before the Tribunal. She also lodged a List of Witnesses for the Applicant. These were sent to the Respondent on 16 September 2024.

15. On 12 September 2024 the Respondent emailed the Tribunal to state she was no longer represented and did not know what to do. The Tribunal emailed the Respondent to advise her she should appear in person if she had not secured alternative representation.
16. On 13 September 2024, Ms Wooley, the Applicant's solicitor submitted a List of Authorities. On 16 September 2024 she also submitted a witness statement from Vincent Friel.
17. On 16 September 2024, Ms MacLeod from Shelter Scottish Housing Law Service advised she was no longer representing the Respondent as Legal Aid had been suspended on 10 September 2024. She however made a formal request for the Hearing to be postponed to a later date to enable the Respondent to seek to resolve the suspension of her Legal Aid Certificate to enable her to be legally represented and explained the Respondent had been engaging with the Department for Work and Pensions to obtain some information needed by the Scottish Legal Board before a decision could be taken to release the suspension of her Legal Aid application. She submitted that such a postponement would comply with the overriding objective to deal with proceedings justly. She further submitted the issue of competency made it difficult for the Respondent to present this argument herself without legal representation. She further submitted the Respondent was vulnerable, was suffering from depression and felt unable to conduct proceedings herself and that without representation the Respondent would struggle to participate fully in proceedings or present her case. Finally, she submitted that as the Applicant was legally represented and to ensure that parties were on an equal footing, the Hearing should be postponed.
18. When the matter came before the Tribunal on 18 September 2024, the Applicant was represented by Ms Wooley from Bannatyne Kirkwood France and Company. Mr Friel the Applicant was also in attendance. Ms Tchialu the Respondent appeared and represented herself.
19. The Tribunal considered the request to postpone made by Shelter on behalf of the Respondent. The Tribunal enquired if the Respondent knew why Legal Aid had been suspended. Ms Tchialu explained that the Scottish Legal Aid Board had asked for details of her bank account. She had been saving child benefit and tax credits for her children in her bank account. She had about £20 000 in her account, but this was savings for her children. She explained she had an appointment with the Department of Work and Pensions the following day on 19 September 2024.

20. Ms Wooley for the Applicant confirmed she had seen the submission made to postpone the Hearing from Shelter made on behalf of the Respondent. She was opposed to a postponement as the matter had dragged on for a considerable period of time. She submitted extensive works were required at the Property and that as Mr Friel and his partner were due to have a baby in December, they desperately needed to move into the Property.
21. The Tribunal referred the Respondent to the submissions made on her behalf by Shelter to postpone the Hearing. The Respondent acknowledged she had some mental health difficulties. The Tribunal explained that the submissions made on her behalf were that she wanted to postpone the Hearing as it was submitted she did not feel she could fully participate or conduct the case herself. Ms Tchialu advised however that she wanted to proceed with the Hearing. The Tribunal explained what proceeding would involve and checked with her that she understood and could fully participate. She confirmed she understood and again confirmed she wanted to proceed with the Hearing.
22. The Tribunal adjourned to consider whether the Hearing should proceed. After a short adjournment the Tribunal decided that as both parties wanted to proceed with the Hearing, it should go ahead. The Tribunal was satisfied that the Respondent understood what was happening and that she was able to fully participate. She had been adamant she wanted to proceed.
23. The Tribunal provided the Respondent with paper and a pen. Ms Wooley provided the Respondent with paper copies of the Applicant's Inventories of Productions. The Tribunal adjourned again to allow the Respondent an opportunity to gather her thoughts before proceeding.

The Hearing

24. After the adjournment the Hearing proceeded. The Tribunal had before it the extensive submissions from both parties, the Inventories of Productions and List of Authorities from the Applicant and a Section 11 of the Homelessness, etc. (Scotland) Act 2003 served on Glasgow City Council on 4 September 2023. The Tribunal considered these documents.

Mr Friel's evidence

25. Mr Friel gave evidence on behalf of the Applicant. Ms Wooley took Mr Friel through his witness statement. He confirmed he was a Director of the Applicant and that Easilet rents out properties in some parts of the West of Scotland. He is also a Director of 1-2 Let (Letting and Sales) Ltd who previously acted as managing agents for the previous owner of the Property. The Property is a three bedroomed ex Council house in urgent need of repair. Easilet bought the Property in March 2023 with the Respondent as sitting tenant.

26. Mr Friel explained that throughout his time as managing agent there have been issues with the Respondent giving access despite the Respondent complaining to the Council about the state of repair. Ms Wooley referred him to Production 6 of the main Inventory of Productions for the Applicant. Mr Friel confirmed this was an Electrical Inspection Report by Lyon Electrical (Scotland) Ltd dated 16 May 2024. He gave evidence that he had asked William Lyon to inspect the electric at the Property. The outcome of the report was that the Property had a RCD, but that there were issues with the wiring in the kitchen and hallway overheating. He had received a quotation from Lyon Electrical for works.
27. Ms Wooley referred Mr Friel to Production 5 of the main Inventory of Productions. Mr Friel explained this was a report from Scopes Asbestos. He went on to explain that ex Council properties such as the Property, were known to have asbestos in the artex ceilings and the walls. If it is not touched, it is safe. He explained he obtained testing kits from Scopes and took samples of small cuttings which were bagged and sealed and sent for analysis. The report shows there is asbestos in the Property. His concern is that if the walls are damaged there would be a danger to the Respondent and her family. There was less of an issue with the artex on the ceiling. However, no contractor will do any works in the Property unless the asbestos is removed. The Tribunal noted the content of the report from Lyon Electrical that stated all asbestos would have to be removed before they could commence works.
28. Mr Friel continued with his evidence that the whole Property needed refurbishment including replacement floors with new carpets throughout. The kitchen and bathroom needed replaced. The Property needed to be stripped back and redecorated. The Respondent had refused access in the past. There was too much furniture in the Property. He had obtained quotes from a few developers including Pyramid Club Ltd. Vacant possession was needed due to the extent of the works. He referred to the quotation from Pyramid which was lodged as Production 10 in the main Inventory of Productions. He explained his intention was to do all the works. All the contractors who had given a quote wanted the Property to be empty. The works would take at least two months. If the Property was not emptied the works could not go ahead. They had tried to redecorate before but there was too much furniture.
29. He went on to give evidence that there had been issues with access over the last few years. The Respondent had got the Council involved. The previous Landlord was keen to do the works. Contractors attended at the Property but were refused access. The Council themselves also struggled to get access. Ms Wooley referred Mr Friel to Production 2 of the Inventory of Productions relating to access. Mr Friel advised that this was an email dated 4 July 2022 from Glasgow City Council to 1-2 Let to advise they were having issues with access too. He explained the Council's team had been out to inspect the Property. Ms Campbell who wrote the email was of the view that unless the Respondent co-operated there was not a lot they could do. Mr Friel explained that they then issued the Respondent with a right of entry letter as they were also not getting access. The Tribunal noted the contents of the email from 1-2 Let to the Respondent dated 28 January 2023 regarding access

30. Ms Wooley questioned Mr Friel about whether he had had any discussions with the Respondent regarding offering her any other property. Mr Friel explained he had but that Ms Tchialu had made it clear to him she did not want another private rental property and only wanted social housing. The first offer he had made to her was about two years previously. The previous Landlord had wanted possession and he tried to facilitate that. He had offered her rehousing at least two times in writing. He understood the Respondent was in dialogue with the Council who were trying to help her. With reference to Production 13 of the main Inventory of Productions he had emailed her on 2 August 2024 again to see if he could assist with rehousing. He did not receive a reply to that email.
31. Ms Wooley referred Mr Friel to Production 12 of the main Inventory of Productions. Mr Friel explained this was an email dated 21 February 2023 where he introduced himself to the local councillor, explained the issues they had been having with access for repairs and asking whether there was anything the councillor could do to assist the Respondent securing social housing.
32. Mr Friel then went on to explain the position regarding his living circumstances. He explained he lived with his partner in a small two bedroomed flat in Dennistoun whilst his own house in Lenzie was getting rebuilt. It had been demolished due to structural issues. He has a 12 year old son who visits. His partner is due to give birth on 20 December 2024. This flat is a first floor flat and is not suitable for her to take a pram up and down the stairs. They had moved in there as that particular flat was coming on the market and they had no where else to live. He had moved out from Lenzie in about October 2023. The build had been delayed and the house would probably not be ready for another year. Ms Wooley referred him to Production 11 of the main Inventory of Productions. Mr Friel confirmed this was the Planning Consent from East Dunbartonshire Council for demolition and rebuilding of his home in Lenzie.
33. In his evidence Mr Friel explained that if the Respondent were to be evicted from the Property his intention would be to have all the works carried out and then move into the Property with his partner and their baby. It is a larger property on the ground floor in Dennistoun. It is near his mother and near the office. He explained that although he owned about 100 properties most of these are 1 or 2 bedroomed properties and not big enough for his needs. He has a few larger properties in the south side, but that was too far from work and his family. He explained the current application was raised nearly a year ago. His partner is stressed as she does not know where they will be living after the baby is born. Renting another property would be expensive for them. The Property meets their needs. He has tried to be accommodating to Ms Tchialu. The previous Landlord wanted to refurbish the Property, but he did not want to evict her. However, Mr Friel explained his personal circumstances are such that on this occasion he has no option but to seek eviction. Since he bought the Property, the Respondent had stopped paying rent. He had

obtained a payment order from the Tribunal. The Respondent had since paid a large sum of money and had cleared the arrears.

34. Mr Friel concluded his evidence. The Tribunal explained to the Respondent she would need to put any points to Mr Friel she did not agree with. The Tribunal adjourned to afford Ms Tchialu an opportunity to think about what she wanted to ask Mr Friel.
35. After the adjournment Ms Tchialu was asked to put her questions to Mr Friel. She asked him if she left in two months' time whether her deposit which she had paid at the start of the tenancy would be repaid to her. Although Ms Wooley objected to the question as being irrelevant, the Tribunal allowed Mr Friel to answer. He explained that the deposit was held by Safe Deposits Scotland and for as long as there were no rent arrears he assured her she would receive her full deposit back.
36. The Tribunal asked the Respondent if she had any further questions for Mr Friel. She confirmed she did not. The Tribunal queried whether she understood that if she did not challenge Mr Friel on issues which she did not agree with, such as the requirement for the works which it had been stated on her behalf were not necessary, the Tribunal would have to find the works were necessary. Ms Tchialu explained she accepted the works were necessary. She accepted that Mr Friel wanted to move in and she had to move out. When questioned by the Tribunal further she stated she did not want to oppose the application and wanted to be rehoused in social housing. She wanted nothing else.
37. The Tribunal enquired of Mr Friel whether he would be willing to rehouse the Respondent elsewhere in the meantime and then move her back into the Property after he had moved out. He confirmed he would be happy to do that. The Tribunal put this to Ms Tchialu. However, she was clear she only wanted to be rehoused in social housing and did not want to go back to the Property. The Tribunal checked again with the Respondent as to whether she had any questions for Mr Friel. She did not.

Mr Belbahi's evidence

38. Ms Wooley then called Mr Azzeddine Belbahi as her next witness. He explained he was the Director of Pyramid Club Limited. His company worked with 1-2 Let as a contractor. He carried out full refurbishments. He had been asked to attend at the Property to give a quote for any works that needed to be done. He described the Property as being in a bad condition, in need of new flooring, plasterwork and a new bathroom and kitchen. He referred to the quote lodged as Production 10 of the main Inventory of Productions. The works quoted would take between two to three months to complete.
39. The Tribunal asked Ms Tchialu whether she had any questions for Mr Belbahi. She advised she did not. The Tribunal thanked Mr Belbahi for his time. Ms Wooley advised she had no further evidence.

Ms Tchialu's evidence

40. The Tribunal explained to Ms Tchialu that although she did not wish to oppose the application to evict her, there was a legal argument presented to the Tribunal on her behalf regarding the status of the tenancy agreement which the Tribunal had to consider. As she was the only person available to give evidence as to what had happened on the day she signed the tenancy agreement, the Tribunal explained it wanted to hear evidence from her about when she signed the tenancy agreement. Ms Tchialu explained she went to 1-2 Let's office, signed the contract and paid her deposit. The Tribunal explained that Ms Wooley would likely have some more detailed questions about events on that day.
41. Ms Wooley asked Ms Tchialu if when she went to the letting agents office she was given an AT5 form and a Lease. Ms Tchialu confirmed she had. Ms Wooley referred her to Production 2 of the main Inventory of Productions, the AT5 and referred her to her signature which was timed as 3.30pm on 31 August 2010. Ms Tchialu accepted that was her signature and that she had signed the AT5 at 3.30pm on 31 August 2010. Ms Wooley referred her to the tenancy agreement lodged as Production 1 of the main Inventory of Productions and referred her to her signature which was timed at 3.35pm on 31 August 2010. Ms Tchialu accepted that was her signature and that she had signed the tenancy agreement at 3.35pm on 31 August 2010. She explained that after she had signed this she was given a copy of it. Ms Wooley put it to her that the tenancy was a short assured tenancy. Ms Tchialu explained that she had been told by the letting agent that it was a short assured tenancy.
42. The Tribunal questioned Ms Tchialu and asked her if she understood when she had been given the AT5 form that the tenancy was a special tenancy called short assured tenancy. Ms Tchialu confirmed she had understood that.
43. The Tribunal asked her about Mr Friel's evidence that he had offered other properties for her and her family. Ms Tchialu explained she did not want a new property from Mr Friel, she wanted social housing. She explained she had been on the waiting list for a long time and had bid for some properties. The Tribunal queried whether she had had help from Shelter regarding her options. She advised she had had no help from Shelter. She just wanted to move out of the Property. She had been to the Citizens Advice Bureau for help. They had sent her to the homeless team at the Council, but they could not offer her anything until she had an order to evict from the Tribunal. When questioned by the Tribunal she was not sure whether she would be offered temporary or permanent accommodation by the Council. She explained she lived with her four children aged 22, 19, 15 and 11. She confirmed they had no illnesses although she suffered from poor mental health and had a knee

problem. When questioned by the Tribunal as to how long she might need to move from the Property she felt she could do so in two months and would prefer to live in a Council or Housing Association house.

Submissions

44. The Tribunal then heard submissions from Ms Wooley. She submitted the tenancy was a short assured tenancy. The Respondent had identified the Lease and the AT5 as the documents she had signed. From Ms Tchialu's evidence it was clear the AT5 had been served on her before the tenancy agreement was created. Although the AT5 was not in the exact statutory form, it contained all the statutory information. Its purpose was to highlight the characteristics of a short assured tenancy. She submitted the AT5 had done that. The evidence was that Ms Tchialu had received the AT5 prior to the Lease and prior to signing the Lease. She submitted the statutory requirements to create a short assured tenancy had been met.
45. With regard to reasonableness, she submitted that it was reasonable to evict. The Tribunal had heard evidence regarding the requirement for the Property to be refurbished and the Applicant's requirement to live there due to his own personal circumstances. The works were necessary for the health of the Property and future tenants. They were extensive works which could not be carried out with the Respondent living in the Property. The Applicant's current flat where he lived with his partner was too small and would be impractical when their baby was born. The Applicant had been sympathetic towards the Respondent and had tried to help her with rehousing before taking action against her, but the Respondent would not accept any help from the Applicant as she only wanted to be rehoused in social housing. The Respondent had accepted she wanted to be evicted and had spoken about the fact she wanted a Council house and needed the eviction order. Ms Wooley submitted the granting of the order would be of benefit to both parties.
46. Ms Tchialu was invited by the Tribunal to make submissions and to say anything further. She confirmed she had nothing more to say.

Findings In Fact and In Law

47. The Respondent attended the offices of 1-2 Let, letting agents on 31 August 2010 to enter into a tenancy agreement with the previous owner of the Property. The letting agent explained to the Respondent the tenancy was a short assured tenancy.
48. The Respondent was served a copy of an AT5 on 31 August 2010 by the letting agent. The AT5 was not in the exact statutory form. It contained all the statutory information. The AT5 had not been signed by the letting agent. The Respondent signed the AT5 and acknowledged receipt of it at 3.30pm on 31 August 2010.

49. The Respondent signed a copy of the tenancy agreement at 3.35pm on 31 August 2010. In terms of Clause 1 of the tenancy agreement the Respondent acknowledged that she had received a AT5 prior to the commencement of the tenancy and that the agreement was intended to create a short assured tenancy as defined in Section 32 of the Housing (Scotland) Act 1988. The Respondent understood this tenancy to be a short assured tenancy agreement. She was given a copy of the tenancy agreement by the letting agent.
50. The Applicant's letting agent signed the AT5 at 4.35pm on 31 August 2010.
51. The tenancy created was a short assured tenancy in terms of Section 32 of the Housing (Scotland) Act 1988
52. The tenancy commenced on 31 August 2010 and continued to 1 September 2011. There is no contractual clause regarding the tenancy continuing. The tenancy continued thereafter on a yearly basis.
53. The Applicant purchased the Property on 10 March 2023 from the previous owner with the Respondent as a sitting tenant. Intimation of change of ownership was made to the Respondent on 13 March 2023.
54. The Applicant's agent 1-2 Let served a Notice to Quit and Notice in terms of Section 33 of the Housing (Scotland) Act 1988 on the Respondent by Sheriff Officers on 13 February 2023. The Notice to Quit and the Section 33 Notice expired on 1 September 2023.
55. The tenancy reached its ish as at 1 September 2023.
56. *Tacit relocation* is not operating. The contractual Short Assured Tenancy had been brought to an end by the Notice to Quit on 1 September 2023.
57. The Property requires extensive refurbishment including asbestos removal, a new kitchen, a new bathroom, new floors, rewiring, replastering and redecoration. The works will take between two -three months to complete. It is not possible for the works to be carried out with the Respondent living in the Property.
58. The Respondent on occasions has refused to give access for repairs to be carried out at the Property in the past.
59. The Applicant requires the Property to live in. His home required to be demolished due to structural issues and is currently being rebuilt. The rebuilding works will take another year to complete. The Applicant lives in a first floor flat with his partner who is due to give birth in December 2024. The Applicant's son stays with him on occasions. The flat is too small and

impractical for his and his family's needs. The Property is a ground floor flat, with three bedrooms in the local area. It is suitable for his needs.

60. The Applicant owns approximately one hundred properties and has offered to rehouse the Respondent in another of his properties. The Respondent has refused his offers of help. The Respondent wants to be rehoused in social housing. The Applicant has tried to assist her in getting social housing. The Respondent has sought help from the Homeless Team at Glasgow City Council.
61. The Respondent lives in the Property with her four children aged 22, 19, 15 and 11. The Respondent is a student.
62. The Applicant's agent served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on Glasgow City Council on 4 September 2023.

Reasons for Decision

63. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the written submissions made by both parties, the documents lodged and the evidence led at the Hearing.
64. Whilst the Respondent's former solicitor had made submissions regarding the status of the tenancy as being an assured as opposed to a short assured tenancy, these were not supported by the Respondent's own evidence. She gave clear evidence that the letting agent had explained the tenancy was to be a short assured tenancy and that an AT5 had been served on her and signed by her before she signed the tenancy agreement. The Tribunal was satisfied the AT5 had been served on the Respondent in terms of Section 54 of the Housing (Scotland) Act 1988. The Tribunal did not accept the Respondent's solicitor's submission that the AT5 had to be signed before it was served. Whilst it is a matter of agreement the AT5 did not follow the exact wording of the AT5 in the Assured Tenancies (Forms) (Scotland) Regulations 1988, the AT5 form as served on the Respondent contained all the statutory information, albeit at the end of the form. To that end the Tribunal preferred the submission made on behalf of the Applicant that the purpose of the AT5 form had been met and that the specific characteristics of a short assured tenancy had been highlighted to the Respondent. The Respondent accepted that in her evidence. The Tribunal formed the view that the placing of the notes at the end of the AT5 did not render it invalid (Adrian Stalker "Evictions in Scotland" Second addition, pages 251-252). Accordingly on the evidence of the Respondent who was the only person able to speak to what happened on the day of the signing of the tenancy, a short assured tenancy was in fact created.
65. The Tribunal concluded that the Applicant was entitled to seek repossession of the Property under Section 33 of the Housing (Scotland) Act 1988. There was a properly constituted short assured tenancy with the Respondent. The

Tribunal was satisfied that the statutory provisions of Section 33 of the Housing (Scotland) Act 1988 had been met namely that the short assured tenancy had reached its end (termination date); the Notice to Quit brought the contractual short assured tenancy to an end, and that the Applicant had given the Respondent notice in terms of Section 33(1)(d) of the Housing (Scotland) Act 1988 stating that possession of the property was required by 1 September 2023.

66. The terms of Section 33 of the Housing (Scotland) Act 1988 previously entitled the Applicant to a right of mandatory repossession of the Property. In terms of Schedule 1, paragraph 3 (4) of the Coronavirus (Scotland) Act 2020 the Applicant also has to satisfy the Tribunal that it is reasonable to evict. In determining whether it is reasonable to grant the order the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case.

67. In this case the Tribunal gave weight to the Respondent being very clear she did not oppose the application. They gave substantial weight to her desire to be rehoused in social housing despite being offered help in rehousing from Mr Friel which she had refused. The Tribunal also considered the issues that the Property needed extensive works to be carried out to it and that these could not be carried out with the Respondent and her family living there due to the risk of exposure to asbestos. The Tribunal gave substantial weight to that. The Respondent accepted that was the position. Whilst the Applicant needed the Property for his own family, the Tribunal gave little weight to that. Even had the Applicant not required the Property, the Tribunal would have still been minded to grant the order to evict due to the extensive works required. The Tribunal considered that the Respondent had not opposed the application and whilst she lived at the Property with her four children, she was very clear she needed an order of eviction to enable her to present as homeless at the Council. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.

68. In the circumstances the Tribunal considered that in terms of Section 33 of the Housing (Scotland) Act 1988 as amended it was reasonable to grant an eviction order. In order to give the Respondent time to seek help on her housing options and to prepare to move the Tribunal determined to suspend the order for two months.

Decision

69. The Tribunal granted an order for repossession suspended for a period of two months. The decision of the Tribunal was unanimous.

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.

Shirley Evans

22 September 2024

Legal Member

Date