



**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/24/2479

**Re: Property at 22 Baldovie Road, Cardonald, Glasgow, G52 3EX (“the
Property”)**

Parties:

**Nichola Smith, 18 Dorchester Avenue, Hoddersdon, Hertfordshire, EN11 9EN
 (“the Applicant”)**

**Lynn O'Doherty, 22 Baldovie Road, Cardonald, Glasgow, G52 3EX (“the
Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined to make an eviction order with enforcement suspended
for a period of four months**

Background

- 1 By application to the Tribunal dated 29 May 2024 the Applicant sought an eviction order against the Respondent in respect of the property under Rule 66 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 and section 33 of the Housing (Scotland) Act 1988. In support of the application the Applicant provided the following documentation:-
 - (i) Short Assured Tenancy Agreement between the parties dated 25 April 2008 together with Form AT5;
 - (ii) Notice to Quit dated 14 February 2024 together with proof of service by recorded delivery mail on that date;

- (iii) Notice under section 33 of the Housing (Scotland) Act 1988 dated 14 February 2024 together with proof of service by recorded delivery mail on that date; and
 - (iv) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Glasgow City Council together with proof of service by email.
- 2 By Notice of Acceptance of Application dated 17 June 2024 a Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. The application was therefore referred to a Case Management Discussion on 14 October 2024 to take place by teleconference. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers in accordance with Rule 17(2) of the Rules of Procedure. Both parties were invited to make written representations in advance of the Case Management Discussion.
 - 3 On 18 September 2024 the Tribunal issued a Direction to the Applicant requiring her to provide any documentation evidencing the landlord's intention to sell to assist in the assessment of reasonableness. It was noted that the Applicant had listed "sale vouching" in the relevant section of the Form E however no such documents had been submitted with the application. On 24 September 2024 the Applicant's representative submitted a Best Price Guide for the property with a covering email from the Scottish Property Centre with a breakdown of costs for the sale of the property.
 - 4 On 23rd September 2024 the Tribunal received an email from Govan Law Centre advising that they had been instructed by the Respondent and requesting a copy of the application paperwork.

Case Management Discussion

- 5 The Applicant was represented at the Case Management Discussion by Ms Gillian Matthew of Bannatyne Kirkwood Frank and Co, Solicitors. The Respondent was represented by Sophie Berry of Govan Law Centre. Neither the Applicant nor the Respondent was in attendance.
- 6 The Tribunal explained the purpose of the Case Management Discussion and the legal test and asked for the submissions on behalf of both parties. For the avoidance of doubt the following is a summary of the submissions made and does not constitute a verbatim account of the discussion.
- 7 Ms Matthew advised that a notice to quit and notice under section 33(1)(d) of the Housing (Scotland) Act 1988 had been sent to the Respondent on 14 February 2024. The contractual tenancy had been brought to an end and tacit relocation was no longer operating. The Applicant was therefore requesting an eviction order, on the basis that it was reasonable in the circumstances of the

case. The Applicant wished to sell the property as the rent was no longer financially viable for her. She no longer wished to be a landlord due to the increase in compliance requirements and insurance obligations. The rental income was £550 per month. The mortgage payments had increased to £799.32 per month when rates spiked a couple of years ago. The Applicant had put in place a short term solution by switching to an interest only mortgage however this was not sustainable in the long term. The payments on the interest only mortgage were £437.50 per month at present. If the Applicant were to sell the property with the Respondent in situ the value on the open market would be decreased.

- 8 Ms Matthew advised that the Applicant hoped to use the proceeds from the sale of the property to pay off the outstanding mortgage, along with other debts including the mortgage for their own property. If the Tribunal were to make an eviction order the local authority would be in a position to provide emergency accommodation for the Respondent. Ms Matthew advised that the property was the only property let by the Applicant. She was struggling to keep up with the compliance requirements and no longer wanted to be a landlord. Ms Matthew submitted that the Applicant should not be forced to continue to do so.
- 9 In response to questions from the Tribunal Ms Matthew explained that the Applicant was the sole owner of the property, but her husband Frankie had been named in the documents from the Scottish Property Centre regarding the sale. Ms Matthew was not aware of any other properties owned and let by the Applicant's husband. She advised that the Applicant was awaiting the outcome of the Tribunal proceedings prior to entering into a contract for the sale of the property. It was however clearly her intention to sell. Ms Matthew did not have any information regarding the Applicant's employment or other income streams.
- 10 Ms Berry addressed the Tribunal on behalf of the Respondent. She advised that she was seeking a full hearing on the reasonableness of making an eviction order. The Respondent had mental health difficulties as well as a brain condition. She resided with her two daughters aged 12 and 18. Her 12 year old daughter was at high school and awaiting an autism diagnosis. Her 18 year old daughter worked full time in the local area and required access to her place of employment. The Respondent needed time to find suitable alternative accommodation for her family. Ms Berry advised that due to the Respondent's health difficulties she had been unable to submit a written response or provide medical evidence in advance of the Case Management Discussion. In response to questions from the Tribunal Ms Berry confirmed that the Respondent's mother lived in the local area and the Respondent relied upon her for support. If an eviction order was granted the Respondent and her family may be placed in temporary hotel accommodation which would not be suitable for their needs.
- 11 The Tribunal queried whether the Respondent was putting forward a defence of reasonableness, or asking for a suspension of any order granted. Ms Berry advised that she would require to seek the Respondent's instructions on that point. The Tribunal therefore adjourned the Case Management Discussion to allow Ms Berry the opportunity to take instructions from the Respondent. The

Case Management Discussion resumed and Ms Berry confirmed that the Respondent would agree to an eviction order with enforcement suspended for a period of four months. The Tribunal then allowed a further adjournment for Ms Matthew to take the Applicant's instructions. The Case Management Discussion resumed and Ms Matthew confirmed that the Applicant was agreeable to a four month suspension.

Relevant Legislation

- 12 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Housing (Scotland) Act 1988, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

“32 Short assured tenancies.

(1)A short assured tenancy is an assured tenancy—

(a)which is for a term of not less than six 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 one which—

(a)is in such form as may be prescribed;

(b)is served before the creation of the 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 that tenancy; and

(d)states that the assured tenancy to which it relates is to be a short assured tenancy.

(3)Subject to subsection (4) below, if, at the finish of a short assured tenancy—

(a)it continues by tacit relocation;

(b).

the continued tenancy... shall be a short assured tenancy, whether or not it fulfils the conditions in paragraphs (a) and (b) of subsection (1) above.

(4)Subsection (3) above does not apply if, before the beginning of the continuation of the tenancy the landlord or, where there are joint landlords,

any of them serves written notice in such form as may be prescribed on the tenant that the continued tenancy is not to be a short assured tenancy.

(5) Section 25 above shall apply in relation to a short assured tenancy as if in subsection (1) of that section the reference to an assured tenancy were a reference to a short assured tenancy.

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 end;

b) that tacit relocation is not operating; and

(c)

(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 six months, that period;

(ii) in any other case, six 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 time 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.”

Findings in Fact and Law

13 The Applicant entered into a Short Assured Tenancy Agreement with the Respondent dated 25 April 2008, the term of which was 25 April 2008 to 25 October 2008 and monthly thereafter. The Respondent was provided with a Form AT5 prior to signing the said Tenancy Agreement.

- 14 The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 15 On 14 February 2024 the Applicant delivered to the Respondents a Notice under section 33 of the Housing (Scotland) Act, stating that the Applicant required the property back by 25 April 2024, and a Notice to Quit which sought to terminate the tenancy as at that date. The Notice to Quit was in the prescribed form. The Notices were served by recorded delivery mail and confirmed as delivered on 15 February 2024.
- 16 The Notice to Quit terminates the tenancy as at 25 April 2024 which is an ish date under the terms of the tenancy agreement.
- 17 The Applicant requires vacant possession of the property in order to sell the property. The Applicant has switched to an interest only mortgage following an increase in mortgage rates however the arrangement is not sustainable in the long term.
- 18 The Applicant wishes to withdraw from the rental market. The Applicant has no other properties that she lets out.
- 19 The Respondent has sought assistance from the local authority to obtain alternative accommodation. The Respondent requires further time in order to source a property suitable for her family.
- 20 The Respondent resides in the property with her two daughters aged 12 and 18. The Respondent has mental health issues and a brain condition.

Reasons for Decision

- 21 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved. Both parties had agreed to the making of an eviction order with enforcement suspended for a period of four months.
- 22 The Tribunal was satisfied that the Respondent had been served with a valid Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988, terminating the tenancy as at the ish date of 25 April 2024. The issue for the Tribunal to determine therefore was whether it was reasonable in all the circumstances to grant an eviction order.
- 23 The Tribunal accepted the Applicant's reason for terminating the tenancy, namely her intention to sell as the property was no longer financially viable. The Tribunal took into account the steps the Applicant had taken in terms of

switching to an interest only mortgage when the mortgage rates had increased. The Tribunal found it credible that the changing financial situation meant that the property was no longer sustainable for the Applicant in the long term.

- 24 The Tribunal also had regard to the Respondent's personal circumstances, noting that she resided with her daughters who both had connections to the local area. The Tribunal took into account the fact that the Respondent had resided in the property for approximately 16 years, and suffered from health issues. Whilst there was no medical evidence to support this, the Tribunal accepted the submissions from Ms Berry at the Case Management Discussion in this regard.
- 25 Whilst the Respondent's personal circumstances were a cause of concern, ultimately the overriding factor in this case was the fact that the Respondent did not object to the making of an eviction order if enforcement was suspended for a period of time, namely four months. She had been given the benefit of legal advice from Govan Law Centre in putting forward her position regarding the application.
- 26 Having weighed up those factors that were relevant to the question of reasonableness the Tribunal concluded that the provisions of section 33 of the 1988 Act had been met and it would be reasonable to make an eviction order in the particular circumstances of this case, with enforcement of said order suspended for a period of four months.
- 27 The Tribunal therefore determined to make an eviction order with enforcement suspended for a period of four 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.

Ruth O'Hare

14 October 2024

Legal Member/Chair

Date

