



**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/24/3179**

**Re: Property at 10G Rowans Gate, Paisley, PA2 6RD (“the Property”)**

**Parties:**

**Mrs Lesley Smith, 0/1 3 St Georges Terrace, Bridge of Weir, PA11 3BA (“the Applicant”)**

**Miss Emily Bolger, 10G Rowans Gate, Paisley, PA2 6RD (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Ahsan Khan (Ordinary Member)**

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

**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. By application received on 10 July 2024, the Applicant 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 14 September 2012.
2. A payment application in respect of rent arrears was lodged at the same time and was conjoined with this application. Both applications proceeded together to the Case Management Discussion (“CMD”).

3. Following initial procedure, the application was subsequently accepted by a Legal Member of the Tribunal acting with delegated powers from the Chamber President who issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations on 5 August 2024.
4. Notification of the application was made to the Respondent by Sheriff Officer on 8 November 2024, together with the date, time and arrangements for a Case Management Discussion ("CMD"). Representations were requested by 28 November 2024. No written representations were lodged by the Respondent prior to the CMD.

### **Case Management Discussion**

1. A Case Management Discussion ("CMD") took place by telephone conference call on 17 December 2024 at 10am, attended by Mr Ian Troy of Penny Lane Homes, the Applicant's letting agent who was representing her. The commencement of the CMD was delayed for 5 minutes to allow an opportunity for the Respondent to join late but she did not do so.
2. Following introductions and introductory remarks by the Legal Member, Mr Troy confirmed that the eviction order was sought on the ground that the short assured tenancy had been brought to an end by the service of the relevant formal notices. The tenancy had been running since 2012 and the Applicant purchased the Property from the original landlord, Pip Zero, in 2022, with the Respondent as sitting tenant. There had historically been rent arrears on the account for a number of years. The rent has been £425 per month throughout the tenancy and the Respondent's rent was paid by way of Housing Benefit. However, there was a shortfall between the Housing Benefit received and the monthly rent, so the Respondent was due to pay a top-up amount every month. She used to pay this regularly by payments of around £30 every few weeks but the top-up payments stopped around July 2023 which led to the arrears increasing gradually. When the application was lodged, the rent arrears amounted to £690.80. Reference was made to the updated rent statement lodged on behalf of the Applicant on 10 December 2024 and it was noted that the arrears now amount to £1,031.60. It was noted that the Applicant's agent had deliberately held off putting in the updated rent statement until after the last Housing Benefit payment had been received (£368.20 on 6 December 2024) so that the updated balance was more accurate. Mr Troy was unsure why the Respondent's Housing Benefit was not paid at a higher rate. It was noted that the Housing Benefit had been £322.20 every month and increased more recently to £368.20. He confirmed that they had sent out the usual 'pre-action requirement' letters to the Respondent concerning the arrears, advice agencies she could contact for assistance, etc.
3. The Legal Member explained to Mr Troy that, even although the eviction application was not opposed by the Respondent, in terms of the amended legislation, the Tribunal still requires to be satisfied that it is reasonable, in all the circumstances, for an eviction order to be granted.

4. Mr Troy explained that the Respondent is in her 60s and does not communicate by email. Since the outset of the tenancy, their contact details have been those of the Respondent's daughter and they previously had contact with the Respondent's daughter on a fairly regular basis, including after notice was served in the eviction action in April 2024. Initially, the Respondent's daughter indicated that they were going to try and resolve the arrears issue but they have had no further contact with her since around the summer of 2024. The Respondent lives alone, is unemployed and is in receipt of benefits. They are not aware of any health conditions or other vulnerabilities. They have not really been given any explanation for the Respondent's top-up payments stopping or the rent arrears. Nor do they know the Respondent's intentions as regards her housing situation, Mr Troy explained that, since serving notice, they have received a few reference requests from the local authority and some housing associations on behalf of the Respondent, so assume that she has made application for social housing and may intend to go down that route if an eviction order is granted.
5. As to the Applicant's circumstances, Mr Troy confirmed that her wish to recover possession of the Property is not just down to the rent arrears which the Tribunal had noted were not particularly high. Mr Troy explained that they discussed with the Applicant her various options in relation to the Property, given that it is essentially loss-making for her. Mr Troy confirmed details of the Applicant's mortgage and other monthly expenditure on the Property which roughly equates to the amount of Housing Benefit payments received towards the monthly rent. However, when repairs and safety checks are taken into account, the Property does not make any profit, even if the top-up payments towards rent were still being made by the Respondent. In addition, the Respondent had to replace the boiler this year at a cost of £2,500. Consideration was given to trying to raise the rent to a more realistic rent, given that this is a two bedroom Property but it was decided that this was not really feasible, as this would simply increase the shortfall in rent that the Respondent would require to pay, when she is not currently managing to meet the current shortfall. The Applicant has decided that, as the Property is no longer financially viable, she is intending to sell it once she recovers vacant possession. Mr Troy confirmed that it is not the Applicant's intention to re-let the Property at a higher rent. The Applicant has one other property that she lets out but it is different as it is making some profit.
6. The Tribunal Members raised the issue of an extension on any eviction date, given the approaching festive period and the difficulties this may present the Respondent in seeking alternative housing. The Legal Member explained the likely timescale for an eviction taking place, without any extension and Mr Troy stated that he did not think the Applicant would have any issue with a slight extension to the eviction date.
7. The Tribunal adjourned briefly to discuss the application and, on re-convening, confirmed that the eviction order sought would be granted, subject to a short extension of a few weeks on the earliest eviction date until mid-February 2025, the exact date to be specified in the Order. Mr Troy was thanked for his attendance and the information he had been able to provide to the Tribunal.

## Findings in Fact

1. The Applicant is the owner and the current landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Short Assured Tenancy which commenced on 14 September 2012.
3. The Applicant purchased the Property around 2022 from the original landlord, with the Respondent as sitting tenant.
4. The monthly rent throughout the tenancy was £425 per calendar month.
5. There was a background of rent arrears dating back several years but the arrears amount had remained fairly stable until around July 2023.
6. The Respondent's rent was paid from her Housing Benefit, although there was a shortfall every month which the Respondent regularly paid until around July 2023 when the top-up payments stopped, without explanation.
7. From July 2023, the rent arrears gradually increased and amounted to £690.80 when this application was lodged.
8. The current level of arrears is £1,031.60.
9. The Applicant has contacted the Respondent regularly via her daughter regarding the rent arrears and 'pre-action protocol' letters have been issued to the Respondent.
10. The Respondent had been called upon to make payment of the amount owing but has failed to do so.
11. The Respondent's daughter initially stated that the Respondent would try and resolve the rent arrears issue but there has been no further contact with the Applicant's agent since around the summer of 2024.
12. The Applicant intends to sell the Property when she recovers possession as it is currently loss-making and no longer financially viable to continue letting it out.
13. The Respondent is understood to be in her sixties, lives alone, is unemployed and in receipt of state benefits, including Housing Benefit.
14. The Respondent is understood to have made enquiries with, or applied for social housing with social housing providers.
15. The Applicant ended the contractual tenancy by serving a Notice to Quit and Section 33 Notice on 9 April 2024, specifying the end of the notice period as 14

June 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 by way of Sheriff Officer.

16. The Respondent has remained in possession of the Property following expiry of the notice period.
17. This application was lodged with the Tribunal on 10 July 2024, following expiry of the notice period.
18. The Respondent has not submitted any written representations in respect of this Application.
19. The Respondent did not attend the CMD.

### **Reasons for Decision**

1. The Tribunal considered all of the background papers, including the application and supporting documentation and the oral submissions made on behalf of the Applicant at the CMD. The Tribunal noted that no representations had been made by the Respondent and that she did not attend the CMD, having been properly and timeously notified of same by way of Sheriff Officer. The Tribunal was satisfied that the application was in order.
2. The Tribunal considered that there was nothing to contradict the information on behalf of the Applicant and therefore no requirement to continue the application to an Evidential Hearing.
3. 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. 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.
4. As to reasonableness, the Tribunal considered the oral submissions of Mr Troy on behalf of the Applicant at the CMD, together with the supporting documentation lodged. The Tribunal took into account the background circumstances, the Applicant's circumstances and the circumstances of the Respondent as far as known to Mr Troy in reaching their decision. The Tribunal was persuaded that the Applicant had a legitimate reason for requiring possession of the Property back, due to her intention to sell the Property, due to financial reasons. The Tribunal noted that there were rent arrears in excess of £1,000 as at 10 December 2024 and that, although Housing Benefit was in payment, this did not cover the whole monthly rent. The Respondent had

stopped paying the shortfall in rent in July 2023 and, accordingly, the rent arrears looked set to continue increasing. No payment proposals had been made by the Respondent and, if the Applicant had instead opted to try and increase the rent to make the Property more financially viable, the Tribunal accepted Mr Troy's submissions that this would likely just amount to a larger unpaid shortfall in the monthly rent. The Tribunal had noted that the Applicant's letting agent had been contacted by several social housing providers on behalf of the Respondent, following the serving of notice so it was hoped that the Respondent had already applied for alternative housing. In all these circumstances, the Tribunal concluded that it was reasonable to grant the eviction order sought.

5. Bearing in mind the time of year, and having ascertained from Mr Troy that the Applicant was unlikely to object to a short extension on the eviction date, the Tribunal decided that it was appropriate to exercise their discretion and extend the earliest eviction date in terms of the eviction order by a few weeks until mid-February 2025.

### **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

**Legal Member/Chair**

**17 December 2024**  
**Date**