



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/EV/23/4084

Re: Property at 10K Craufurdland Road, Kilmarnock, KA3 2HT (“the Property”)

Parties:

Mr David Cavanagh, 12 Union Street, New Mills, KA16 9AZ (“the Applicant”)

Mr Mariusz Biniak and Mrs Katarzyna Wit Biniak, 10K Craufurdland Road, Kilmarnock, KA3 2HT (“the Respondents”)

Tribunal Members:

Shirley Evans (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondents for possession of the Property at 10K Craufurdland Road, Kilmarnock, KA3 2HT under 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 Respondents. The order will include a power to Officers of Court to eject the Respondents 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 his name may enter thereon and peaceably possess and enjoy the same.

Background

1. This is an action for recovery of possession of the Property raised in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
2. The application was accompanied by a copy of a tenancy agreement dated 18 and 19 October 2016 between the Applicant and the

Respondents, an AT5 dated 17 October 2015, a Notice to Quit and Section 33 Notice dated 5 July 2023, post office receipts dated 26 October 2023 and 3 November 2023, Royal Mail Track and Trace receipts dated 27 October 2023 and 6 November 2023, a rent statement, bank statements, a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 to East Ayrshire Council dated 10 November 2023 and an acknowledgement from East Ayrshire Council dated 14 November 2023.

3. The Tribunal thereafter made various enquiries of the Applicant regarding the service of the Notice to Quit and Section 33 Notice and the AT5. The Applicant advised that it had been agreed between the Respondents and his letting agents to communicate by email as this was their preferred method so that they could use a translator service to translate any correspondence into Polish. The Notice to Quit and Section 33 Notice were also served on the Respondents by post. The Applicant advised that the original tenancy commenced on the 30 October 2015. The AT5 was created at that time. The lease was renewed on the 30 October 2016 and no further AT5 was required. The Applicant forwarded copy emails dated the 5 and 7 July 2023 addressed to the Respondents enclosing copies of the Notice to Quit and the Section 33 Notice and letters to the Respondents in English and Polish dated 18 and 25 October 2023 and 3 November 2023.
4. On 19 July 2024 the Applicant emailed the Tribunal with further documents regarding right to entry requests made in both English and Polish dated 22 and 28 June 2023 and 11 July 2023, a rent statement to the 18 July 2024 showing arrears of £7451 and an email dated 4 January 2024 from PCKwikFix advising the Respondents' email address no longer existed.
5. The Tribunal proceeded with a Case Management Discussion ("CMD") on 29 July 2024 by way of teleconference. The Applicant appeared and represented himself. He was supported by his colleague Alison Patterson. There was no appearance by or on behalf of the Respondents despite the teleconference starting 5 minutes late. The Tribunal was satisfied the Respondents had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in their absence. The case was heard with an application for rent arrears under reference FTS/HPC/CV/24/4087.

6. After hearing submissions from the Applicant, the Tribunal granted an order for eviction. The decision was thereafter issued to the parties. The decision is referred to.

7. On 29 August 2024 and 2 September 2024, the Tribunal received emails from Mr Biniak sent from two separate email addresses requesting *"reinstatement of the time limit for filing a letter of reconsideration"*. These emails were accompanied by letters for various medical appointments from 5 July -7 August 2024 and a number of Statements of Fitness for Work for Social Security or Statutory Sick Pay dated 24 May – 19 August 2024. Thereafter the Tribunal requested whether the medical letters could be crossed over to the Applicant.

8. On 6 September 2024 the Tribunal received a further two emails, one from Mr Biniak and the other from a non- named party both stating they were *"confidential/treat as confidential"* . The emails were in the exact same terms and appeared to be requesting an extension of time to lodge an appeal. These emails contained a number of allegations of harrassment against the Applicant and the Applicant's letting agent and an explanation for Mr Biniak's failure to appear at the CMD on 29 July 2024 when he stated he was in hospital following *"an accident through the sole fault of Mr David Cavannah(sic)"*. He stated the arrears were *"false and fraudulent"* with reference to bank statements and a rent book which he did not enclose and which he stated showed the Respondents had overpaid the rent. He attached an accident and emergency report from Crosshouse Hospital dated 23 October 2023, a victim care card dated 31 October 2023 from Police Scotland, an appointment letter dated 26 August 2024 from the Universal Credit Health Assessment Advisory Service, a Statement of Fitness for Work for Social Security or Statutory Sick Pay dated 30 July 2024, a letter from NHS Ayrshire and Arran dated 2 September 2024 for an outpatient appointment in a nurse led clinic and a proof of recorded delivery to the Tribunal dated 28 June 2024. This appeared to relate to the return of the application papers to the Tribunal by either Mr or Mrs Biniak. The emails stated that they had not received the application papers in a language they understood and that they were entitled to have these papers in Polish.

9. On 8 September 2024 the Tribunal received three emails from a non-named party using Mr Biniak's email address. Two of these were marked *"Confidential"*.

10. On 9 September 2024 the Tribunal acknowledged receipt of the emails of 29 August, 2 and 6 September 2024 and sought clarification as to whether Mr Biniak sought a recall of the decisions of 29 July 2024 or leave to appeal. The Tribunal advised that in either case the Tribunal was willing to grant an extension of time for the lodging of either a request for recall or leave to appeal by no later than 23 September 2024. The Tribunal also

advised it could only accept emails from a named party and could not accept emails from non-named parties unless a named party had authorised that person to contact the Tribunal. The Tribunal also suggested that Mr Biniak seek independent legal advice. A copy of this email was sent to the Applicant.

11. On 9 September 2024 the Tribunal received an email from Mr Biniak advising he did not consent to the medical letters being passed to the Applicant. On 9 September 2024 Mr Biniak also sent a further email to the Tribunal repeating the request for an extension of time to lodge an appeal and the allegations of harassment etc against the Applicant and the Applicant's letting agent contained in his email of 6 September 2024. Mr Biniak attached a copy of the Notice to Quit dated 5 July 2023 and the same documents sent with his email of 6 September 2024.

12. On 9 September 2024 Mr Biniak acknowledged receipt of the Tribunal's email of 9 September 2024 and enquired as to whether the Orders were on hold. The Tribunal confirmed the Orders were on hold until 23 September 2024.

13. On 17 September 2024 the Tribunal received an email from a non-named party sent from Mr Biniak's email address. This stated that the person was looking for an *"extension of the time-limit and a request for the service of the case file in Polish"*.

14. On 19 September 2024 the Tribunal received a further email from the same non-named party. Attached to this email was a *"Proposal for a New Deadline of 110 days to Lodge an Appeal or Request for Cassation(sic)"*. This *"Proposal"* purported to be in the name of Mr Biniak and referred to Article 6 of the Human Rights Act 1998 and the Victims and Witnesses (Scotland) Act 2014. This *"Proposal"* sought a further 110 days beyond 23 September 2024 to lodge an appeal or cessation and founded on the inability to obtain legal representation or Legal Aid despite approaching 200 law firms. Attached were some responses from solicitors unable to assist Mr Biniak. This email made the same allegations against the Applicant and his letting agent as previously and claimed that witnesses including expert witnesses such as accountants had to prepare the case and that they would come from Scotland and from Poland to give evidence on behalf of Mr Biniak. It requested time to *"Allocate sufficient time (110 days) to review the case file in Polish, prepare bank evidence to prove lack of debt, prepare a list of witnesses; so as to balance the odds against the slanderer"*. It also referred to medical appointments Mr Biniak had on 25 September, 1 and 20 October 2024. Although mention was made of Mrs Biniak it was unclear whether this *"Proposal"* was also made on her behalf. There was a request for the papers and the decisions to be translated into Polish and served on each of the Respondents separately. This email was marked *"Confidential"*.

15. The "*Proposal*" sent on 19 September 2024 was again sent on 20 September from Mr Biniak's email address. The email was marked "*Confidential*".
16. On 23 September 2024 the Tribunal acknowledged receipt of the emails of 17, 19 and 20 September 2024.
17. On 23 September 2024 Mr Biniak emailed the Tribunal three times to advise he had been granted Legal Aid and requested "*that your application be granted*". This request was however prepared by the same non-named party and requested an extension of time from 23 September 2024 to "*lodge an appeal or a withdrawal of the decision*" due to a "*force majeure*" being the September weekend of 20-23 September 2024. He advised that Mr Biniak was being represented by Ayr Housing Aid Centre SCIO and was due to consult with them the following day. An email in the same terms was sent to the Tribunal on 24 September 2024. All emails were marked as "*Confidential*".
18. On 24 September 2024 the Tribunal acknowledged receipt of the emails of 17, 23 and 24 September 2024 and again pointed out it could not correspond with a non-named person. The Tribunal also advised that it was prepared to extend the time to lodge an appeal or a recall to close of business on 4 October 2024.
19. On 25 September 2024 the Tribunal received a "*Request for Support for an Elderly Disabled Person*". This was sent from Mr Biniak's email address and was signed off, but not signed by a non-named party and Mr Biniak. This requested the papers be translated into Polish, that Legal Aid be granted, that "*special resources*" be provided to assist Mr Biniak in preparing his case and a TV link be provided. This claimed Mr Biniak was disabled and "*the syndrome of diseases acquired during the 2020 period, permanently prevents independent access to the legal system. Loss of mobility in communication prevents independent movement for distances greater than 20 meters.*" The loss of mobility it was claimed was as a result of hate crimes against Mr Biniak by the Applicant, a third party and the Applicant's letting agents. It included the letter of 7 August 2024 originally sent with the emails of 29 August and 2 September 2024 relating to a medical appointment on 25 September 2024 and a letter from Universal Credit dated 23 September 2024 stating Mr Biniak had limited capability for work, a victim care card dated 31 October 2023 from Police Scotland which had been sent originally on 6 September 2024 and a victim report care card dated 5 September 2024 from Police Scotland. This email was marked "*Confidential*".
20. On 29 September 2024 the same non-named person sent a further email from Mr Biniak's email address with a "*Durable Power of Attorney*" in favour of Gerry Tierney, Advocay and Advice Worket from Ayr Housing Aid Centre SCIO. This included emails between the non-named party and Ayr

Housing Aid Centre and a copy of what appeared to be a Polish identity card for Mr Biniak. This email was marked as "*Confidential*".

21. On 2 October 2024 the Tribunal acknowledged receipt of the emails of 25 and 29 September 2024.
22. On 3 October 2024 the Applicant emailed the Tribunal looking for an update and advising he was under some stress and anxiety due to not hearing from the Tribunal.
23. On 3 October 2024 the same non-named party emailed the Tribunal from Mr Biniak's email address stating Mr Biniak was being represented by Ayr Housing Aid Service and had met with them on 2 October 2024. This email was marked as "*Confidential*".
24. Further on 3 October 2024 the Tribunal received a request for recall of the decisions of 29 July 2024 from Ayr Housing Aid Service. The application for recall stated Mr Biniak had received the application papers in English only which presented difficulties in his understanding and that he had been ill, hence he had not attended the CMD. It was accompanied by a "*Care at Home Plan*" dated 7 September 2024 and a signed mandate by Mr Biniak in favour of Ayr Housing Aid Service.
25. On 3 October 2024 the Tribunal acknowledged receipt of the application for recall and sought clarification whether the Care at Home Plan could be passed to the Applicant. A copy of the application for recall was sent to the Applicant.
26. On 4 October 2024 Mr Biniak's representative sent a number of Statements of Fitness for Work for Social Security or Statutory Sick Pay dated 7 June -19 August 2024. These had been previously sent under cover of the emails of 29 August and 2 September 2024 from Mr Biniak. Mr Biniak's representative also advised that any evidence submitted to the Tribunal could be sent to the Applicant.
27. On 11 October 2024 the Applicant lodged an objection to Mr Biniak's application for recall. He also submitted a further email of objection on 12 October 2024. The Applicant stated Mr Biniak had had adequate time to lodge the recall on time regardless of any language barrier. The Applicant also stated he had received numerous emails from Mr Biniak since the decisions accusing him and his letting agents of hate crimes and of sending people to the Property threatening violence. The Applicant stated that Mr Biniak had also accused him of working in collusion with the Police and Crosshouse Hospital. The Applicant reiterated he had never had any contact with Mr Biniak as he had stated at the CMD and that the accusations against him were false. He also reiterated his submissions regarding the failure to pay rent. He stated Mr Biniak had neglected the

Property, had failed to give access resulting in the Applicant raising an action for access in the Tribunal and that Mr Biniak had made a false insurance claim. His response was sent to Mr Biniak's representative.

28. On 23 October 2024 Mr Biniak's representative advised that he had could not advise that any previous correspondence sent by Mr Biniak to the Tribunal could be crossed to the Applicant and that he had advised Mr Biniak that it was not helpful to keep emailing the Tribunal.
29. On 28 October 2024 the Tribunal granted Mr Biniak's application for recall. Copies of the recall decision were sent in both English and Polish to Mr Biniak's representative and to Mrs Biniak by recorded delivery mail. A copy of the recall decision was also sent to the Applicant.
30. On 7 November 2024 the Tribunal served a copy of the application on the parties and advised them that a CMD would proceed on 19 December 2024. This paperwork was served on the Respondents in both English and Polish by Andrew McLean, Sheriff Officer, Glasgow personally in the hands of Mrs Biniak on 8 November 2024 at the Property. Copies of the Executions of Service were received by the Tribunal administration. Copies of the application in both English and Polish were also sent to Mr Biniak's representative.
31. On 12 November 2024 the Tribunal issued a Notice of Direction to parties. This was served on Mr Biniak's representative in both English and Polish and on Mrs Biniak in Polish by recorded delivery mail. In terms of the Notice of Direction the Applicant was required to provide all documents such as emails, text messages, letters or messages which showed or tended to show the correspondence between the Applicant or the Applicant's agent and the Respondents in relation to the arrears, an up to date rent statement and any other documentation the Applicant intended to rely upon. The Tribunal required the Applicant lodge these documents by 2 December 2024. In terms of the Notice of Direction the Respondents were required to lodge all bank statements or bank transaction records for the period from February 2022 to date which showed all payments made by the Respondents to the rent account for the Property and any other documentation the Respondents intended to rely upon. The Tribunal required the Respondents to lodge these documents by 2 December 2024.
32. On 18 November 2024 Mr Biniak sent the Tribunal a Power of Attorney in favour of the Savannah and Gabriel Save the Children Found Ltd as his *"Advocate and Agent in Court contact persons Mr Andrzej Kupris and Mr Antoni Konrad Urbanek, Master of Law"*. It further stated that *"I do not at this time withdraw my full Power to Gerry Tierney, Advocacy and Tribunal Worker, Ayr Housing Aid Centre SCIO"*. This email was marked as *"Confidential"*.

33. Before the Tribunal had an opportunity of responding to the email of 18 November 2024, the Tribunal received an email on 20 November 2024 from Mr Biniak's email address from "*DDO Personal Data Department*" at the Savannah and Gabriel Save the Children Found Ltd alleging that the Tribunal had breached GDPR by having sheriff officers attend at the Property address. This email contained a "*Statement of Leaving the Documents of the Other Participant for Collection at a Place where they were left*" and appeared to state the application papers for Mrs Biniak were deposited through their letterbox, not sealed and available for anyone to read. Copies of some of the Polish translated papers addressed to Mrs Binaik were attached. This email was marked as "*Confidential*".
34. On 20 November 2024 the Tribunal emailed Ayr Housing Aid Centre with a copy of the email of 18 November 2024 seeking clarification as to the purpose of the email of 18 November 2024
35. On 27 November 2024 the Tribunal emailed Mr Biniak's email address in response to the email of 20 November 2024 advising the Tribunal had checked their records and that the sheriff officers did not deposit the paperwork as the correspondence was served on Mrs Katarzyna Wit Biniak personally on the 8 November 2024 at the Property. This email also confirmed that SCTS had a lawful basis for instructing sheriff officers to serve the paperwork, had a lawful basis for providing sheriff officers with a copy of the papers and that the Tribunal was content the application papers had been validly served.
36. On 22 November 2024 the Tribunal received three separate emails from Mr Biniak's email address. The first email was signed off by the "*Department for the Protection of Personal Data, Andrzej Kupis*". They contained a statement of discontent with the representation from the Ayr Housing Aid Service, allegations against the Applicant and his letting agent and an allegation the Lease was invalid. This email stated that the power of attorney granted in favour of Ayr Housing Aid Service was limited but not terminated. It contained company information for various companies, emails between Mr Biniak and Ayr Housing Aid Service, a copy letter dated 11 October 2024 from Mr Biniak's GP addressed to him regarding waiting time for an appointment at hospital, Communication Sheets dated September and November 2024 for East Ayrshire Health and Social Care Partnership, the letter from Universal Credit dated 23 September 2024 originally sent on 25 September 2024, an undated email from the Letting Agent Regulation Team of the Scottish Government, an email dated 15 November 2024 to Environmental Protection Services at East Ayrshire Council, a Care at Home Care Plan dated 15 October 2024, a Personal Carer Visit Log dated 2- 14 November 2024, allegations against a third party, photographs, statements that the Property was unfit for human habitation, a list of medications, a Statement of Fitness for Work for Social Security or Statutory Sick Pay dated 24 May 2024 originally sent with the email of 29 August 2024, the repeated allegations of hate crimes by the

Applicant, the victim care card dated 31 October 2023 from Police Scotland originally sent on 6 September 2024, a Police Scotland Crime Report form, a letter dated 31 August 2024 to Police Scotland alleging crimes by the Applicant, the victim care card dated 5 September 2024 from Police Scotland originally sent in the email of 25 September 2024, an accident and emergency report from Crosshouse Hospital dated 5 October 2023, a letter from NHS Ayrshire and Arran dated 19 August 2024 for an outpatient on 2 September 2024, a letter from NHS Ayrshire and Arran dated 2 September 2024 for an outpatient appointment in a nurse led clinic on 1 October 2024 originally sent on 6 September 2024, a letter from NHS Ayrshire and Arran dated 2 September 2024 for an outpatient appointment on 10 September 2024, a letter from NHS Ayrshire and Arran dated 11 July 2024 for an appointment on 7 August 2024 originally sent on 29 August 2024, a letter dated 3 September 2024 from NHS Ayrshire and Arran for an appointment on 17 September 2024, and a record from the Scottish Ambulance Service dated 12 April 2024. These emails were marked "*Confidential*".

37. On 26 November 2024 the Tribunal received an email from Mr Biniak's email address as "*Service Advisor: - Argonauts Media Group*" which stated "*I would very much like to ask for instructions*". The email also showed a reference *the Savannah and Gabriel Save the Children Found Ltd* and the Polish Yellow Pages, and attached one of the emails of 22 November 2024. This email was marked "*Confidential*". Three duplicates of this email were also received by the Tribunal on 26 November 2024 with copies of the emails sent on 22 November 2024. These were also marked as "*Confidential*".

38. On 26 November 2024 the Applicant's representative Maria McNulty from R and G Estate Agents requested that copies of the paperwork be sent to her directly. These were sent to her directly on 27 November 2024.

39. On 27 November 2024 the Tribunal acknowledged receipt of all the emails of 22 and 26 November 2024 and advised Mr Biniak about the duplicates having been sent, and that any submissions should come from their representative. The Tribunal also stated that the second batch of emails requested instructions and pointed out that as previously advised the Tribunal was unable to provide legal advice and referred him to the relevant sections of the Tribunal website where he could find useful links in seeking independent advice.

40. On 28 November 2024, in response to the Notice of Direction the Applicant's representative lodged copies of letters in English and in Polish with rent statements dated 18 and 26 October and 3 November 2023 from the R and G Estate Agents to the Respondents, emails dated 11, 14 and 22 March, 5, 6 and 13 April, 3 and 4 May 2022 addressed to Mr Biniak from R and G Estate Agents, an email dated 1 March 2022 from Mr Biniak to R and G Estate Agents, an email dated 28 February 2022 from Mr Biniak to

R and G Estate Agents, an email also dated 28 February 2022 from R and G Estate Agents to Mr Biniak, the Respondents' Tenancy transaction details dated 24 November 2024, an emails dated 8 April 2024 from the Tribunal regarding case reference FTS/HPC/RE/23/3614, a copy Rent Book on paper from the Savannah and Gabriel Save the Children Found PLC and headed "Proof R and G Services Ltd. Recording of Payments and Expenses in the Tenant's Book", an email dated 3 January 2024 from Microsoft Outlook showing the email address m.biniak@kilmarnock.scot did not exist, emails dated 15 and 17 November 2024 from Mr Biniak to the Applicant and R and G Estate Agents with a "Request for payment" for £72 450.45 as a "Victim of Crimes" with a copy of the tenancy agreement between the Applicant and the Respondents dated 18 and 19 October 2016 as "Evidence of Crime" a Form J with attachments to the Tribunal dated 11 April 2024 raised by the Respondents against R and G Property Services Ltd alleging unlawful eviction, homelessness, racism, molestation, no renovations and eviction attempts. A copy of these documents were sent to Mr Biniak by email and to Mrs Biniak by post on 4 December 2024.

41. On 29 November 2024 the Tribunal received an email from Mr Biniak's email address as "Service Advisor: - Argonauts Media Group" advising Mr Biniak had been unable to meet with his representative who was not responding to his emails and that Mr Biniak had met with his doctor regarding a planned surgical procedure. This email made reference to GDPR and referred to "DPPD Department for the Protection of Personal Data Andrzej Kupis" This email was marked as "Confidential".
42. A further email was also received on 29 November 2024 by the Tribunal from Mr Biniak regarding the email of 27 November 2024 sent by the Tribunal to Mr Biniak being filed in the "Spam" folder.
43. On 2 December 2024 the Tribunal received an email from Ayr Housing Aid Centre SCIO that they had given advice to Mr Biniak to which he appeared unhappy with and that they had repeatedly requested he refrain from contacting the Tribunal, which had been ignored by him and that in the circumstances the relationship had irretrievably broken down leaving them with no option but to withdraw from acting for Mr Biniak.
44. On 4 December 2024 the Tribunal sent a copy of the email of 29 November 2024 regarding "Spam" emails and the email of 2 December 2024 from Ayr Housing Aid Centre SCIO to the Applicant's agent.
45. On 12 December 2024 the Tribunal received an email from Mr Biniak's email address from Andrzej Kupris, Service Advisor, Argonauts Media Group. The email also showed a reference the Savannah and Gabriel Save the Children Found PLC. The contents of the email were unclear but suggested that Mr Biniak's email address had been hacked on 2 December 2024 and that it was impossible to contact the Tribunal and that Mr Biniak had sought medical attention. It contained an undated request to "restore the new deadline for filing documents. The deadline expired on

December 02, 2024” and stated that “no later than December 07, 2024 by the end of the Court's business day, we will deliver the Application and Statement along with copies of documents from this email address referred.” It also made allegations of “manipulation or financial embezzlement” by the Applicant and/or his agents and that Mr Biniak’s health problems were caused by “hate crimes” committed by the Applicant and a third party. Attached was a report dated 3 December 2024 from the Scottish Ambulance Service attending to Mr Biniak complaining of hypertension and advising him to contact his GP when they left the Property as he was well. It also contained emails dated 2 December 2024 with a revocation of the Power of Attorney in favour of the Ayr Housing Aid Service and a Recorded Delivery slip dated 29 November 2024. All emails were marked “Confidential”.

46. On 17 December 2024 the Tribunal received an email from Mr Biniak’s email address from Andrzej Kupris and Antoni Konrad Urbanek, M.A. in Law stating that Mr Biniak had undergone some medical treatment and that he had a loss of hearing and sight. A Statement of Fitness for Work for Social Security or Statutory Sick Pay dated 11 December and covering the period to 18 December 2024 stating “*Tinnitus. Recent hospital stay*” was attached together with a form headed NHS Ayrshire and Arran Care Comfort Round dated 4 December 2024. The email also stated that by 18 December 2024 they would send a procedural motion to re-instate the deadline of 2 December 2024, a procedural request to cancel the CMD of 19 December 2024, a letter from the Health and Safety Manager, and the Chief Accountant regarding liabilities, medical records from the hospital for the period from December 1, 2024 to date and copies of documents from correspondence and actions taken by the Applicant and his agents.
47. On 19 December 2024 the Applicant’s agent sent an updated rent statement to the Tribunal showing arrears of £10 326 and proof of postage dated 5 July 2023.

Case Management Discussion

48. The Tribunal proceeded with the CMD on 19 December 2024 by way of teleconference. The case was heard with a cojoined action for rent arrears under case reference number FTS/HPC/CV/24/4087. The Applicant was represented by Ms McNulty from R and G Estate Agents. The Applicant and his colleague Alison Patterson were also in attendance. There was no appearance by or on behalf of the Respondents despite the teleconference starting 10 minutes late. Mr Krzyszto, a Polish interpreter was also in attendance.

49. The Tribunal thanked Mr Krzyszto, the interpreter for his assistance and excused him from his duties due to the failure of the Respondents to appear.
50. The Tribunal advised Ms McNulty that it had received some correspondence from Mr Biniak's representatives on 17 December 2024 that indicated Mr Biniak had been recently unwell although there was nothing in that correspondence by way of medical evidence on soul and conscience to show that he was unable to attend the CMD. The Tribunal enquired as to whether in the circumstances the Applicant wanted to proceed with the CMD.
51. Ms McNulty submitted that the Applicant wished to proceed with the CMD. She made submissions that it was not unusual for Mr Biniak to state he had had some serious accident or a stay in hospital a couple of days before a Tribunal hearing or when they were due to inspect the Property. This was a delaying tactic by Mr Biniak. She recalled one occasion where they were due to inspect the Property, and he tried to put it off claiming he had broken all his ribs. They had proceeded with the inspection, and he had no difficulty in running up and down the stairs. In her submission it was unclear whether the Mr Binaik's representatives Mr Kupris and Mr Urbanek lived in the Property. Her company had also received emails from Mr Kupris and Mr Urbanek. There was no reason before the Tribunal as to why they could not represent Mr Biniak at the CMD. Her agency and her colleagues had received numerous emails from Mr Biniak, Mr Kupris and Mr Urbanek which were abusive and made unfounded allegations against them. In her submission the allegations made were false and incredibly upsetting for some of her younger colleagues against whom had had personal allegations made against them and who felt harassed and threatened by the tone and the language used in the emails.
52. Ms McNulty submitted that at every email they received they were made to "dance to his tune" to ensure they were doing the right thing. Mr Biniak and his representatives were abusing the Tribunal process. He never attended any Tribunal hearings but always tried to delay them. They had to gain an order from the Tribunal to get access to the Property despite his attempts to delay the proceedings.
53. She further submitted that the Respondents had falsified a "rent book" which she had lodged. As letting agents they did not issue rent books and had used electronic means of payment for years. The Respondents were effectively living in the Property rent free. The constant allegations made against the Applicant and her company were farfetched and dangerous.

She referred the Tribunal to the emails Mr Biniak had sent on 15 and 17 November 2024 claiming £72 450.45 from the Applicant.

54. At that point the Applicant asked if he could speak. The Tribunal allowed him to do so. The Applicant explained that Mr Biniak had attempted to assassinate his character by making false allegations against him of violence and harassment. The Applicant had been to the Police in Kilmarnock who told him that complaints had been made against him but that there was no evidence to back Mr Biniak's complaints up. No charges had been brought against him. Mr Biniak had been given a reference number and had been told any complaints against the Applicant was a civil matter. Mr Cavanagh stated he had had no personal contact with either Respondent since 2016. Everything had been done through his letting agent and they had corresponded in both English and Polish with the Respondents. Mr Cavanagh stated he could not emphasise the amount of stress Mr Biniak had caused not only to him, but to his family as well. He stated he was concerned about the state of the Property and how he could keep his property safe. He wanted to proceed with the case as he wanted to repossess the Property with a view to selling it.
55. Ms McNulty submitted that she was struggling to understand why the Applicant's position should be prejudiced by a further delay if the CMD was postponed. It had been 6 months since the CMD on 29 July 2024 when the Order had been originally granted. It had been nearly a full year since the application was submitted. The rent arrears were increasing and were now sitting at over £10 000. If the CMD did not proceed there would be a further lengthy delay which was unacceptable and further abusive emails with more excuses as to why the case should not proceed at the next CMD. In the circumstances she submitted the CMD should proceed in the absence of the Respondents.
56. The Tribunal adjourned to discuss whether to proceed with the CMD in the absence of the Respondents. The Tribunal noted the application papers for both Respondents had been served personally on Mrs Biniak on 8 November 2024. The Tribunal was satisfied the Respondents had received notice under Rule 24 of the Regulations that the CMD would proceed on 19 December 2024. In any event it was clear from the correspondence received from Mr Biniak and his representatives Mr Kupris and Mr Urbanek that they knew the CMD was proceeding on 19 December 2024. Mr Biniak had two representatives who had recently been in contact with the Tribunal and who could have appeared at the CMD. No medical evidence on soul and conscience had been produced to show that Mr Biniak was unable to attend the CMD. All that had been produced was a copy of a Statement of

Fitness for Work for Social Security or Statutory Sick Pay dated 11 December and covering the period to 18 December 2024 stating “*Tinnitus. Recent hospital stay*” together with a form headed NHS Ayrshire and Arran Care Comfort Round dated 4 December 2024. The Tribunal considered the relevant circumstances, including the Statement of Fitness for Work and the Care Comfort Round Form, against the background of the whole procedural history. The Statement of Fitness for Work only dealt with Mr Biniak’s fitness for work, not his ability to participate in the Tribunal proceedings. The Tribunal was mindful of the overriding objective under in Rule 2(1) of the Regulations to deal with proceedings justly. In terms of Rule 2(2) dealing with proceedings justly includes dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties seeking informality and flexibility and avoiding delay, so far as compatible with the proper consideration of the issues. The Tribunal accepted Ms McNulty’s and the Applicant’s submissions that if the CMD was postponed it would severely prejudice the Applicant’s right to rent. The Tribunal appreciated the Applicant was under a huge amount of stress by the delay in the proceedings to date. It appeared to the Tribunal on balance that it could proceed without the Respondents, both of whom had failed, without reasonable excuse, to attend or be represented, particularly when Mr Biniak’s representatives Mr Kupris and Mr Urbanek M.A in Law had been in contact with the Tribunal two days previously.

57. In the circumstances the Tribunal proceeded with the CMD. The case was heard with an application for rent arrears under reference FTS/HPC/CV/24/4087.
58. The Tribunal had before it the tenancy agreement dated 18 and 19 October 2016 between the Applicant and the Respondents, an AT5 dated 17 October 2015, an email dated 28 February 2022 from Mr Biniak to R and G Estate Agents, an email also dated 28 February 2022 from R and G Estate Agents to Mr Biniak, an email dated 1 March 2022 from Mr Biniak to R and G Estate Agents, emails dated 11, 14 and 22 March 2022, 5, 6 and 13 April 2022, 3 and 4 May 2022 addressed to Mr Biniak from R and G Estate Agents, right to entry requests made in both English and Polish dated 22 and 28 June 2023 and 11 July 2023, a Notice to Quit and Section 33 Notice dated 5 July 2023, a post office receipt dated 5 July 2023, copy emails dated the 5 and 7 July 2023 addressed to the Respondents enclosing copies of the Notice to Quit and the Section 33 Notice, pre action letters to the Respondents in English and Polish with rent statements dated 18 and 26 October 2023 and 3 November 2023 from R and G Estate Agents, post office receipts dated 26 October 2023 and 3 November 2023, Royal Mail Track and Trace receipts dated 27 October 2023 and 6 November 2023, a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 to

East Ayrshire Council dated 10 November 2023 and an acknowledgement from East Ayrshire Council dated 14 November 2023, a copy rent book on paper from the Savannah and Gabriel Save the Children Found PLC and headed "*Proof R and G Services Ltd. Recording of Payments and Expenses in the Tenant's Book*", an email dated 3 January 2024 from Microsoft Outlook, an email dated 4 January 2024 from PCKwikFix, an email dated 8 April 2024 from the Tribunal regarding case reference FTS/HPC/RE/23/3614, a Form J with attachments to the Tribunal dated 11 April 2024 raised by the Respondents against R and G Property Services Ltd alleging unlawful eviction, homelessness, racism, molestation, no renovations and eviction attempts, emails dated 15 and 17 November 2024 from Mr Biniak to the Applicant and R and G Estate Agents with a "*Request for payment*" as a "*Victim of Crimes*" with a copy of the tenancy agreement between the Applicant and the Respondents dated 18 and 19 October 2016 as "*Evidence of Crime*", the Respondents' tenancy transaction details dated 24 November 2024, the updated rent statement showing arrears of £10 326 and bank statements. The Tribunal considered the terms of these documents.

59. Ms McNulty referred to the tenancy agreement, the Notice to Quit and the Notice under Section 33 of the Housing (Scotland) Act 1988. She submitted that the original short assured tenancy between the Applicant and the Respondents commenced on the 30 October 2015 and lasted for a year. The AT5 was dated 17 October 2015. A continuing tenancy agreement was then entered into on 18 and 19 October 2016. There was no need to serve another AT5. That continuing Short Assured Tenancy Agreement commenced on 30 October 2016 and continued until 30 October 2018. There was no contractual clause regarding the tenancy continuing. Therefore the tenancy was continuing after 30 October 2018 on a yearly basis on *tacit relocation*. She referred to the Notice to Quit and the Section 33 Notices and submitted they had been served by both email and by post on 5 July 2023 seeking repossession of the Property by 30 October 2023. She referred to the post office receipt dated 5 July 2023 and the emails dated 5 and 7 July 2023 to the Respondents. The notices were accordingly valid.

60. With regards to reasonableness, Ms McNulty submitted it was reasonable to evict due to the rent arrears and due to the fact the Applicant now wanted to sell the Property. There had been numerous emails with the Respondents regarding arrears at the Property. She submitted the Respondents had a contractual obligation in terms of the tenancy agreement to pay rent of £575 per month. The Respondents could have been in no doubt about that. The Respondents had indicated they wanted to communicate by email. They had sent letters on 18 and 26 October 2023 and 3 November 2023 in both

English and Polish with the Respondents. The letters of 26 October 2023 and 3 November 2023 had been sent by recorded delivery post. The Tribunal noted the emails in 2022 between the parties, the letters in 2023 and the Recorded Delivery Track and Trace receipts lodged. Ms McNulty also referred the Tribunal to the rent statement showing arrears had increased to £10 326 from £7451 when the original payment order was granted with reference to the arrears action.

61. Ms McNulty submitted that the rent book she had lodged had been produced by Mr Biniak. However, they did not have a rent book system as payments were made electronically by tenants. She submitted this was a falsified rent book. The dates of payments in that book did not match with their records. Ms McNulty submitted the last payment to account was of £596 on 4 September 2023. This payment had been by bank transfer. She further submitted that they had not had any payments from the DWP. As far as she was aware Mr Biniak was in employment. The Respondents had made no effort to contact them to clear the arrears prior to this CMD. They were living in the Property rent free. The arrears had increased to £10 326 from £7451 when the original payment order was granted with no prospect of the Respondents clearing them.

62. Ms McNulty submitted that the Applicant wanted to sell the Property. There had been various issues with the Respondents refusing to give access. No one was allowed in except the tradesman and even then, some tradesmen refused to work in the Property due to the state it was in. They struggled to get the Respondents to engage with them to allow them to carry out compulsory inspections for gas servicing, PAT testing and legionella testing. It was impossible to see how things would be different if the order for eviction was refused. Her client was concerned about the state of the Property. The whole thing was causing him a huge amount of stress and anxiety. She had understood the Respondents had separated and that Mr Biniak still lived in the Property. They had two children, whom she believed went with Mrs Biniak. However, there was still evidence of childrens' toys outside the Property.

Findings in Fact

63. The Applicant is the heritable proprietor of the Property.

64. The Applicant entered into a continuing Short Assured Tenancy Agreement dated 18 and 19 October 2016 commencing on 30 October 2016 with the Respondents. This was a continuation of a previous Short Assured Tenancy from 30 October 2015. An AT5 dated 17 October 2015

had been served on the Respondents prior to parties entering into the Short Assured Tenancy in October 2015.

65. In terms of the continuing Short Assured Tenancy Agreement the tenancy commenced on 30 October 2016 and continued until 30 October 2018. There was no contractual clause regarding the tenancy continuing after 30 October 2018. The tenancy continued thereafter on a yearly basis by way of *tacit relocation*.
66. In terms of Clause 3.1 of the Short Assured Tenancy Agreement the Respondents agreed to pay rent of £575 per month. The rent has not increased since then.
67. The Respondents started to accrue rent arrears from February 2022.
68. The Applicant's letting agents R and G Estate Agents have regularly contacted the Respondents regarding the arrears. The Applicant's letting agents were in email correspondence with Mr Biniak regarding the arrears from 28 February 2022. Mr Biniak sent an email dated 1 March 2022 to R and G Estate Agents. R and G Estate Agents sent further emails on 11, 14 and 22 March 2022, 5, 6 and 13 April 2022, 3 and 4 May 2022 to Mr Biniak regarding the rent arrears.
69. The Respondents' last payment towards rent was for £596 on 4 September 2023. The arrears had accrued to £1701 by then.
70. R and G Estate Agents sent letters in both English and Polish to the Respondents on 18 and 26 October 2023 and 3 November 2023. The letter of 18 October 2023 enclosed a copy rent statement and advised the outstanding arrears were £2276, advised the Respondents where they could seek assistance with paying the rent and signposted them to advice agencies.
71. The letter of 26 October 2023 was sent by Recorded Delivery post and enclosed a copy rent statement and advised the outstanding arrears were £2276, offered to work with the Respondents towards a repayment plan, advised them where they could seek assistance with paying the rent and signposted them to advice agencies. This letter was signed for on 27 October 2023.
72. The letter of 3 November 2023 enclosed a copy rent statement and advised the outstanding arrears were £2851, signposted the Respondents to advice agencies and advised R and G Estate Agents were still willing to agree a repayment plan with the Respondents.
73. The Respondents were in arrears of £7451 on 29 July 2024 when the original decisions for arrears and eviction were granted by the Tribunal. The Respondents have accrued further rent arrears and are in arrears of £10 326 to 19 December 2024.

74. The Respondents have refused to give access to the Applicant's tradesmen to carry out essential testing or repairs. The Applicant has required to take the Respondents to the Housing Tribunal to gain a warrant for access.
75. The Applicant is concerned about the state of the Property. The Applicant wishes to sell the Property.
76. The Respondents have two children.

Findings in Fact and In Law

77. The tenancy between the parties dated 18 and 19 October 2016 is a Short Assured Tenancy in terms of Section 33 of the Housing (Scotland) Act 1988.
78. The Applicant's agent served a Notice to Quit and a Notice in terms of Section 33 of the Housing (Scotland) Act 1988 both dated 5 July 2023 on the Respondents. These were served on the Respondents by recorded delivery post on 5 July 2023. Copies of both notices were also sent to the Respondents by email of 5 and 7 July 2023. The Notice to Quit and the Section 33 Notice expired on 30 October 2023.
79. The Short Assured Tenancy reached its end as at 30 October 2023.
80. *Tacit relocation* is not operating. The contractual Short Assured Tenancy had been brought to an end by the Notice to Quit on 30 October 2023.
81. The Tribunal is satisfied that the requirements set out in Section 33 of the Housing (Scotland) Act 1988 have been established.
82. The Tribunal is satisfied that it is reasonable to make an order for eviction.

Reasons for Decision

83. The Tribunal considered the following provisions of the Housing (Scotland) Act 1988:-

“Section 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 two months, that period;
 (ii) in any other case, two 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 finish 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.”

84. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the oral submissions made by Ms McNulty and Mr Cavanagh. 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 Respondents. The tenancy was a continuing Short Assured Tenancy. An AT5 had been served prior to the creation of the previous Short Assured Tenancy in October 2015. 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 Respondents notice in terms of Section 33(1)(d) of the Housing (Scotland) Act 1988 stating that possession of the Property was required by 30 October 2023.
85. In terms of Section 33 of the Housing (Scotland) Act 1988 the Applicant also has to satisfy the Tribunal that it is reasonable to evict. The leading Scottish authority on reasonableness is the case of *Barclay v Hannah* 1947 S.C. 245 at 249 per Lord Moncrieff ; the Tribunal must establish, consider and properly weigh the “*whole of the circumstances in which the application is made*” 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.
86. In this case the Tribunal gave weight to the Respondents being in substantial arrears and that they had not been in contact with the Applicant to make any arrangement to clear these. The numerous emails from Mr Biniak received by the Tribunal eluded that the Respondents had overpaid rent and were not in arrears. A “rent book” had been produced in some of these emails and had been lodged by the Applicant. The Tribunal accepted the submissions made by Ms McNulty that this was falsified and that R and G Estate Agents did not use rent books. The Respondents had produced no evidence to show they had overpaid the rent and were not in arrears. The Tribunal had issued a very clear Notice of Direction to the Respondents on 12 November 2024 that they required to lodge bank statements or bank transaction records for the period from February 2022 to date which showed all payments made by the Respondents to the rent account for the Property and any other documentation the Respondents intended to rely upon. The Respondents had produced no documentation in support of their claim they were not in arrears and had overpaid on the rent. The Respondents’ position was not credible. They had had nearly six months since the original order was granted on 29 July 2024 to produce supporting documentary evidence which may have assisted them in their argument. However, they had not done so. The Tribunal accepted the submissions of Ms McNulty that the arrears had increased to over £10 000 which against a monthly rent of £575 were substantial and that the Respondents had not engaged with the Applicant or his letting agents. The Tribunal accepted Ms McNulty’s submissions regarding the amount of

arrears, how these had accrued and that they had tried unsuccessfully to get the Respondents to engage with them to clear the arrears.

87. It appeared to the Tribunal that the relationship between the Applicant/his letting agents and the Respondents had broken down. Going forward it would be difficult if not impossible for the Applicant and his letting agents to manage the Property without being challenged at every step as demonstrated by the issues the Applicant had had in gaining lawful access to the Property.

88. In the present case it is also relevant for the Tribunal to consider the Applicant's legal right to sell the Property. The Tribunal accepted the Applicant's position that he is clearly concerned about the state of the Property and is anxious about its deterioration and now just wants to sell it. The Tribunal gave considerable weight to the fact the Applicant exercises a right of property, which gives him the right to sell the Property.

89. The Tribunal had very little before it with regards to the Respondents' circumstances. The application papers had been served on Mrs Biniak in person which showed she continued to live in the Property. The Respondents had two children. There was no medical evidence under soul and conscience which would assist in determining any health issues the Respondents may have had or how these may have been affected by an order for eviction. Mr Biniak was understood to be in employment. There was no evidence submitted or suggestions from the Respondents that there were any outstanding or pending claims or entitlement to any welfare/housing benefits. In all the circumstances the balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.

90. 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.

Decision

91. The Tribunal granted an order for repossession. 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.

S Evans

S Legal Member

20 January 2025

Date