Housing and Property Chamber
First-tier Tribunal for Scotland

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")

Chamber Ref: FTS/HPC/EV/24/3013

Re: Property at Flat 1/1, 20 Bulldale Place, Glasgow, G14 0NE ("the Property")

Parties:

Mr Adnan Alshoufi, 2 Marshall House, Upper Newtownards Road, Dundonald, Belfast, BT16 1RB ("the Applicant")

Ms Joanna Ziolkowska, Ms Teresa Ziolkowska, Flat 1/1, 20 Bulldale Place, Glasgow, G14 0NE ("the Respondents")

Tribunal Members:

Sarah O'Neill (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for recovery of possession should be granted in favour of the Applicant.

Background

1. An application was received from the Applicant's solicitor on 2 July 2024 under rule 66 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ('the 2017 rules') seeking recovery of possession of the property under a short assured tenancy by the Applicant against the Respondents.

2. Attached to the application form were:

   (i) Copy short-assured tenancy agreement between the Applicant and first Respondent which commenced on 1 July 2010 and ran for a period of 12 months, together with form AT5 (dated 30 May 2010) relating to that tenancy.

(ii) Copy short assured tenancy agreement between the Applicant and both Respondents, which commenced on 1 July 2011 and ran for a period of 12 months, together with form AT5 (dated 10 June 2011) relating to that tenancy.

(iii) Further short assured tenancy agreements between the parties, each for a period of 12 months commencing on 1 July in the years 2012, 2013, 2014, 2015, 2016, 2017, 2019 and 2021, together with a form AT5 in respect of each of these tenancy agreements.

(iv) Copy notices required under section 33 of the 1988 Act ('the section 33 notice') dated 3 April 2024 and addressed to each Respondent.

(v) Copy Notices to Quit dated 3 April 2024, one addressed to each Respondent, requiring them to remove from the property on or before 30 June

(vi) Copy certificates of service, one for each Respondent, certifying that the Notice to Quit and section 33 notice had been served on them by sheriff officer on 8 April 2024.

(vii) Copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 addressed to Glasgow City Council, together with covering email dated 2 July 2024.

(viii) Signed statement by the landlord dated 2 July 2024.

3. The application was accepted on 24 July 2024.

4. A case management discussion (CMD) was scheduled for 9 December 2024. On 19 November 2024, a letter was received from the second Respondent, Ms Teresa Ziolkowska, requesting a postponement because the Respondents wished to seek legal representation and considered that the Applicant had made procedural mistakes. The CMD was postponed on that basis.

5. The adjourned CMD was scheduled for 15 May 2025. A letter was sent out to the parties to notify them about the CMD on 26 March 2025.

6. The Tribunal issued a direction to the parties on 23 April 2025. The Respondents were invited to make any written submissions they wished the Tribunal to consider at the CMD. The Applicant was directed to make written submissions about why he considered that :

   a) there was a short assured tenancy in place between the parties, rather than a private residential tenancy, and
   b) the Notices to Quit dated 3 April 2024 and served on the Respondents on 8 April 2024 were valid.

7. A response to the direction was received from the Applicant's solicitor on 8 May 2025. No response or any other written representations were received from the Respondent prior to the case management discussion.

The case management discussion

8. A CMD was held by teleconference call on 15 May 2025. The Applicant was present on the teleconference call and was represented by his solicitor, Mr Paddy O'Donnell of Aberdein Considine. The Respondents were not present or represented. The Tribunal delayed the start of the CMD by 10 minutes, in case the Respondents had been detained. They did not attend the teleconference call, however, and no telephone calls, messages or emails had been received from them.

9. The Tribunal noted that the notification letter regarding the CMD had been sent to the Respondents by recorded delivery. The Applicant told the Tribunal that he had visited the property on 28 April 2025 and had spoken to the Respondents then. He said that they were aware of the CMD, which they had discussed.

10. The Tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date and time of a CMD had been duly complied with. The Tribunal therefore proceeded with the CMD in the absence of the Respondents.

Preliminary issues

11. The Tribunal raised two preliminary issues regarding the application, both of which were related to the subject matter of its direction of 23 April 2025.

12. Firstly, with regard to whether there was a short assured tenancy (SAT) in place between the parties, the Tribunal noted the arguments set out Mr O'Donnell's response of 8 May 2025 to its direction. He referred to Section 32 of the 1988 Act, which states:

" (3)… if, at the finish of a short assured tenancy –

(a) it continues by tacit relocation; or
(b) a new contractual tenancy of the same or substantially the same premises comes into being under which the landlord and the tenant are the same as at that ish,
the continued tenancy shall be a short assured tenancy…..".

13. He also pointed to Regulation 6 ('the Saving Provision') of the Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No. 3, Amendment, Saving Provision and Revocation) Regulations 2017. which has the effect that a new contractual tenancy created after 1 December 2017 is an SAT under the 1988 Act where:

    - It comes into being at the ish of an existing short assured tenancy
    - It is of the same or substantially the same premises
    - It has the same landlord and tenant

14. He also referred to the Upper Tribunal decision in Boyle v Ford 2023 [UT] 04, which concerned a similar situation to that of the present application. It was held in that case that all that was required for Section 32(3)(b) of the 1988 Act to apply was that both parties under a post-December 2017 tenancy agreement were to be the same as the previous agreement. He also noted that (as per Sheriff Jamieson in Boyle v Ford at paragraph 31), although the Applicant had issued AT5s each year with the renewed lease documentation, this was not a necessity if the original lease and AT5 were valid.

15. Mr O'Donnell submitted that an SAT had been created between the parties on 1 July 2011 and that this tenancy was still in place. The Applicant had re-issued to the Respondents updated lease paperwork each year on or around the anniversary of the original agreement, which the Respondents had signed.. While no new tenancy agreement had been signed between 1 July 2019 and 1 July 2021, the tenancy had continued from 1 July 2020 - 30 June 2021 by tacit relocation. Likewise, it had continued by tacit relocation from 1 July 2021 until 30 June 2024 on an annual basis. The tenancy agreement had therefore never come to an end and so was not a private residential tenancy, but an SAT.

16. The Tribunal accepted these arguments and determined that there was an SAT in place between the parties.

17. Secondly, the Tribunal considered what the correct ish date was for the tenancy Mr O'Donnell submitted that, as the parties had entered into a SAT each year from 2011 until 2021, commencing each year on 1 July for 12 months, the tenancy end date was 30 June. Had the Respondents been given until 1 July 2024 to vacate, a new SAT would have commenced on that date, by virtue of tacit relocation and Section 32(3)(a) of the 1988 Act, entitling the Respondents to another year of tenancy. As such, the ish date was 30 June 2024, and the Notices to Quit as served were valid. The Tribunal accepted that this was the correct position.

The Applicant's submissions

18. Mr O'Donnell told the Tribunal that the Applicant was seeking an eviction order because he wished to sell the property. He had originally instructed estate agents and arranged viewings in around 2022. The Respondents had agreed in principle to accommodate these viewings, but had then refused to do so. The Applicant had made a previous application to the Tribunal in October 2022, which had been unsuccessful.

19. The Applicant told the Tribunal that he had bought the property as a new build in 2006. He had then moved to Northern Ireland because his wife was pursuing postgraduate studies there, and had rented out the property to the Respondents. He had not intended to be a landlord in the longer term, but during the pandemic it had been difficult to end the Respondents' tenancy.

20. He is now based in Northern Ireland, and lives in a rented home with his wife and their 13 year old twins. One of the children is disabled and his wife cares for them and is unable to work. The property is the only property he owns, and he now wishes to sell it in order to buy a home for himself and his family to live in.

21. The Applicant said that he had taken out an interest only mortgage when he bought the property, which is due to expire in September/October 2026. If he is unable to sell the property, it may be repossessed by his mortgage lender.

22. The Tribunal asked the Applicant what he knew about the Respondents' circumstances. The Applicant said that there was no-one else living in the property with them. The second Respondent is disabled, and the first Respondent, who is her mother, cares for her. He was unsure as to whether the second Respondent's disabilities affected her mobility, and confirmed that the property had not been adapted in any way for the Respondents. He said that the second Respondent used to work but no longer does, and that he believed that the first Respondent has a part-time job. He was unable to confirm whether they were in receipt of any housing or other benefits, but said that they had always paid their rent directly to him and on time.

23. The Applicant said that when he had spoken with the Respondents last month, they have told him that they were not currently classed as a priority case and needed an eviction order to get more points for social housing.

Findings in fact

24. The Tribunal made the following findings in fact:

    i. The Applicant is the sole owner of the property.

ii. The property is the only property owned by the Applicant.
iii. There is a short assured tenancy in place between the parties.
iv. The tenancy commenced on 1 July 2011 for a period of 12 months. It has continued since that date on a yearly basis until 30 June 2024.
v. The form AT5 dated 10 June 2011 was in the prescribed format and the original short-assured tenancy agreement between the parties which commenced on 1 July 2011 validly constituted.
vi. The Notices to Quit and the section 33 notices all dated 3 April 2024 stated that the Applicant required vacant possession of the property on or before 30 June 2024. These provided more than two months' notice of vacant possession.
vii. The notices dated 3 April 2024 were validly served on the Respondents by sheriff officer on 8 April 2024.
viii. The tenancy reached its ish on 30 June 2024.

Reasons for decision

25. The Tribunal considered that in the circumstances, it was able to make a decision at the CMD without a hearing as 1) having regard to such facts as were not disputed by the parties, it was able to make sufficient findings to determine the case and 2) to do so would not be contrary to the interests of the parties.

26. The Tribunal noted that section 33 (1) of the 1988 Act as amended states:

(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 finish;

(b)that tacit relocation is not operating;

(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.

27. The Tribunal was satisfied that the short-assured tenancy agreement between the parties had been validly constituted. It was also satisfied that the short-assured tenancy had reached its ish; that tacit relocation was not operating; and that the Notices to Quit and section 33 notices dated 3 April 2024 had been validly served on the Respondents, for the reasons set out above.

28. The Tribunal then considered whether it was reasonable to make an order for recovery of possession. In doing so, it took into account all of the circumstances of the case.

29. The Tribunal noted that at the start of the short assured tenancy, given the rules that were in place at that time, the Applicant might have expected to be granted an eviction order automatically, were the Tribunal satisfied that he had followed the correct rules in terms of creating the tenancy and serving the various notices correctly. The Notice to Quit had been served on the Respondents more than a year ago. The Respondents had in fact been aware since 2022 that the Applicant sought to repossess the property.

30. The Tribunal also noted the Applicant's situation, in particular that due to his current personal and financial circumstances, he required to sell the property in order to buy a home in Northern Ireland for himself and his family.

31. In the absence of any appearance by the Respondents or any written representations from them, the information available to the Tribunal about their circumstances was limited. The Tribunal noted that the second Respondent appears to have multiple disabilities and that the first Respondent is her carer. This is borne out by the letter received from the Respondents on 19 November 2024, prior to the original CMD scheduled for 9 December 2024. The Respondents have been living in the property for almost 14 years (almost 15 years in the case of the first Respondent).

32. The Tribunal also noted, however, that the Respondents have not opposed the application. It appears that they may actually be seeking an eviction order to assist them with securing social housing. This suggests that they have been in contact with relevant social housing providers, and is again consistent with what they had said in their letter of 19 November 2024.

33. Having carefully considered all of the evidence and all of the circumstances of the case as set out above, the Tribunal considered that on balance, it was reasonable to grant an eviction order. It gave particular weight to the fact that the Respondents had not opposed the application and apparently required an eviction order to allow them to secure social housing.

34. The Tribunal therefore determined that an order for recovery of possession should be granted in favour of the Applicant.

Decision

35. The Tribunal granted an order in favour of the Applicant against the Respondents for recovery of possession of the property.

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. O'Neill

Legal Member/Chair

23 May 2025

Date