



**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/24/2373**

**Re: Property at 453 Victoria Road, Flat 3/2, Glasgow, G42 8RW (“the Property”)**

**Parties:**

**Mrs Margaret Kelly, 35 Nursery Street, Flat 0-1, Glasgow, G41 2PL (“the Applicant”)**

**Mr Codru Luncan, Mrs Liliana Luncan, 453 Victoria Road, Flat 3/2, Glasgow, G42 8RW (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member) and Mary Lyden (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction should be granted.**

1. On 15<sup>th</sup> April 2024 the Applicant lodged an Application with the Tribunal under Rule 66 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondents from the property.
2. Lodged with the application were: -
  - a. Short Assured Tenancy Agreement commencing 13<sup>th</sup> April 2017 and initially running for 6 months and monthly thereafter, and with monthly rent of £525;
  - b. AT5 Notice dated 13<sup>th</sup> April 2017;
  - c. Notice to Quit dated 6<sup>th</sup> February 2024 for 14<sup>th</sup> April 2024;
  - d. Section 33 Notice dated 6<sup>th</sup> February 2024 for 14<sup>th</sup> April 2024 ;
  - e. Proof of service of c. and d.;
  - f. Section 11 Notice;

3. The Application was served on the Respondent by Sheriff Officers on 26<sup>th</sup> November 2024.
4. On 20<sup>th</sup> December 2024 the Respondents' solicitor lodged a First Inventory of Productions containing a Report by Specialist Child Services in respect of the child, Denis Luncan, dated 11<sup>th</sup> September 2024.

### **Case Management Discussion**

5. The Case Management Discussion ("CMD") took place on 14<sup>th</sup> January 2025 by teleconference. The Applicant was represented by Ms McMaster of Ross and Liddell. The Respondents were represented by Ms Smith of Castlemilk Law Centre.
6. Ms Smith said that the application was opposed. She confirmed that there was no challenge to the documents lodged, including the notice served. The opposition was in relation to reasonableness.
7. The Tribunal decided that the matter required to proceed to an evidential hearing restricted to reasonableness.
8. The Tribunal issued a Direction to the parties, directing that all documents on which they wished to rely, and a list of the witnesses they intend to call at the hearing would need to be lodged at the Tribunal 14 days before the Hearing.

### **Post CMD**

9. On 28<sup>th</sup> January 2025 the Respondents' solicitor lodged a Second Inventory of Productions containing a letter from New Gorbals Housing Association dated 7<sup>th</sup> January 2025, and a letter from Govanhill Housing Association dated 6<sup>th</sup> January 2025.
10. On 5<sup>th</sup> February 2025 the Applicant's agent lodged a 78 page document containing a tax bill in the name of the Applicant's husband, costings in respect of the Re-Roofing and Fabric Repairs required to the building of which the property forms part, and factoring invoices showing costs the Applicant has to meet in relation to the property.

### **Hearing**

11. The Hearing took place in person at the Glasgow Tribunal Centre on 16<sup>th</sup> June 2025. The Applicant was present and was represented by Mrs McMaster and Mrs Monaghan of Ross and Liddell. The First Named Respondent appeared and both Respondents were represented by Ms Smith of Castlemilk Law Centre. An interpreter, Christian Voinea interpreted by phone.

12. The Tribunal confirmed with the parties that the only issue in dispute was whether or not it was reasonable to grant the order for eviction.
13. Mrs McMaster confirmed that the Applicant wished to sell the property due to financial hardship and the effect it is having on her health. She went through the documents lodged and the Applicant gave evidence.
14. The Applicant confirmed she had instructed Scottish Property Centre to sell the property and they were waiting to hear from her after the tenant had left. She also confirmed that the tax bill lodged was in the name of her husband and that it had not been in relation to any joint venture that she had been involved in.
15. Mrs McMaster made reference to the letter from the Applicant's GP dated 30<sup>th</sup> January 2025, which mentioned the Applicant said that she was stressed due to financial strain.
16. The Applicant spoke about the repairs which needed done. The Respondents' solicitor confirmed that the need for repairs was not in dispute. The Applicant said there was a compulsory order from the local authority regarding the repairs, but she could not be more specific. She said that she was still waiting for the works to commence. It could still be some time before they begin. It was with the factor, and she has asked for an update. She explained that until a few years ago there had been no factor, and she had taken the lead in any work which required to be done, gathering the money from the owners. She pushed for a factor to take over, and the building is now factored by Macfie & Co. She said that she will be responsible for one eighth of the costs and it will be a five figure sum. She said that the repairs needed to be carried out before the property could be sold. She said that she might consider selling with the tenant in situ if the price was right, but she would rather have the house empty and repair and refurbishment works carried out and then sell. The Applicant said that the works require to be carried out as there is a danger to the building.
17. The Applicant confirmed that the Respondents have been there since 2017. She was unsure what the current rent was. It had been raised recently, but she had not considered raising it further.
18. The Applicant said that she is 65 years of age, and her husband is 64. She is retired, but had no income of her own as she is below state pension age. Her husband is employed as an engineer, she is not sure how much his salary is. Her husband was previously self employed, the tax bill came from that period. She said that she may have to borrow to carry out the repairs. She owns no other rental properties.
19. Ms Smith took evidence from the First Named Respondent. He apologised that his wife was not able to be present as she was caring for the children.
20. The First Named Respondent said that he is the tenant and has lived there since 2017. The flat is a three bedroom one, and is on the third story. He is 55 years old and his wife is 46. They live at the property with three children aged

3, 10 and 12. The children attend school locally, being Holyrood Secondary and St Bride's Primary. He said that he works part time as a delivery driver and receives Universal Credit and Child Benefit. The rent is £588, having risen in November 2024 from £525.

21. The First Named Respondent spoke about the health of his youngest child, Denis, born 10<sup>th</sup> September 2021, and made reference to the medical report. He said that Denis had operations to his head as he had liquid inside his head. A tube has been put in to circulate the fluid from brain to body. He can't walk properly and can't eat properly. It affects his mobility. He is walking a little, but his leg is still a problem. He said, when asked, that the Second Named Respondent has problems with her spine. Doctors have said it would be better for the family if they were living on the ground or first floor.
22. The First Named Respondent said that the family are part of the Roma community. There is a fairly large community in the area. He said that living in the area meant they could access the children's schools and the GP, who they had been with since they moved to Glasgow in 2009.
23. The First Named Respondent spoke about alternative housing. He has asked everywhere. He has been told that his case is not urgent because he has a place to stay. Govanhill Housing Association told him that he would have to wait for a response from the Tribunal. Glasgow City Council said the same when he spoke to them about homelessness. He confirmed that they were all fully aware of the family's circumstances. He said that he wanted to stay in the area where his children go to school.
24. Ms Smith said that the Respondents could be facing hotel accommodation or temporary accommodation for a long time.

## **Findings in Fact**

- i. The parties entered into a Short Assured Tenancy Agreement in respect of the property;
- ii. The tenancy commenced on 13<sup>th</sup> April 2017, with the initial term of 6 months, and monthly thereafter;
- iii. Notice To Quit and Section 33 Notice were served timeously and correctly;
- iv. The Short Assured Tenancy has reached its end;
- v. Tacit relocation is not operating;
- vi. The Applicant is 65 and her husband is 64;
- vii. The Applicant is retired and has no income as she is below state retirement age;
- viii. The Applicant is in employment;
- ix. The Applicant's husband has an outstanding tax bill;
- x. The building in which the property is situated requires substantial repair and refurbishment;
- xi. The work is being managed by the factor, Macfie & Co, and has not yet commenced;

- xii. The Applicant is responsible for a one eighth share which will amount a five figure sum;
- xiii. The Applicant wishes to sell the property when the repairs have been carried out;
- xiv. The Applicant is finding the financial burden of the flat stressful;
- xv. The property is a three bedroomed flat on the third story of the building;
- xvi. The First Named Respondent is 55 and the Second Named Respondent is 46;
- xvii. They live with three children, aged 3, 10 and 12;
- xviii. The children all attend school locally;
- xix. The First Named Respondent is a part time delivery driver and also receives Universal Credit and Child Benefit;
- xx. The youngest child, Denis, aged 3, has health issues;
- xxi. Denis has difficulty walking and eating;
- xxii. The Second Named Respondent has problems with her spine;
- xxiii. Medical advice has been given to the family stating that they would be better living in ground or first floor accommodation;
- xxiv. The Respondents are part of the Roma community;
- xxv. There is a sizeable Roma community in their area;
- xxvi. Living in the area means that the children can access their schools and the family can access their GP, which has dealt with them since they arrived in Scotland in 2009;
- xxvii. The Respondents have tried to find new accommodation using various sources;
- xxviii. Both Govanhill Housing Association and Glasgow City Council have told them they must wait for the outcome of the Tribunal proceedings.

## Reasons For Decision

25. Section 33 of the Housing (Scotland) Act 1988 is as follows:

*(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.*

*(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 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.*

25. The Tribunal is satisfied that the Short Assured Tenancy has been brought to an end and that tacit relocation is not operating. There was no dispute of this by the Respondents. The Applicant has served the correct notices on the Respondents to bring the Short Assured Tenancy to an end, and is entitled to ask them to leave. She does not require to satisfy a particular ground of eviction.
26. The Tribunal must now decide if it is reasonable to grant the Order, and to do so must consider and weigh properly the whole of the circumstances. The Tribunal considered that both the Applicant and the First Named Respondent were credible and reliable. Both gave evidence in a clear way and did not evade any questions.
27. The Tribunal accepts that a substantial amount of repair and refurbishment is required to the property and that the Applicant is finding it stressful and financially difficult.
28. The Tribunal accepts that the Respondents are currently situated in accommodation which is unsuitable for the health needs of both the Second Named Respondent and Denis. It was clear that they have been told by several authorities that nothing can be done about re-housing them until the Tribunal proceedings have come to an end. The Tribunal accepts that they have taken all steps available to try to find alternative accommodation, and they are opposing the order as they do not have anywhere else to go.
29. Having weighed the competing issues the Tribunal considers that it is reasonable to grant the order. The overriding factor as far as the Tribunal is concerned is the fact that the current accommodation is unsuitable for the health needs of both Denis and the Second Named Respondent given its location on the third storey. Additionally, it is also clear that no housing

association or authority will assist with alternative accommodation until the Tribunal has made an order.

30. There were no complaints by the Applicant about the conduct of the tenancy by the Respondents. There was no mention of any rent arrears. On that basis the Tribunal will suspend extract of the order for a period of two months from the date when it should be granted. This gives the Applicant the certainty of an eviction order and the Respondents some further time to contact the various authorities for assistance with re-housing.

### **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.**

**Alison Kelly**

**Legal Member/Chair**

**19<sup>th</sup> June 2025**

**Date**