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") and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations")

Chamber Ref: FTS/HPC/EV/24/5346

Re: Property at Flat 1/2, 22 Annette Street, Glasgow, G42 8YA ("the Property")

Parties:

Mr Gobind Gharra, Kamalijt Gharra, 6 Thornlea Drive, Giffnock, Glasgow, G46 6DB ("the Applicant")

Mr Zulfiqar Ali Khan Begum, Mrs Qaisara Zulfiqar, Flat 1/2, 22 Annette street, Glasgow, G42 8YA ("the Respondent")

Tribunal Members:

Nicola Weir (Legal Member) and Mary Lyden (Ordinary Member)

Decision

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. The application received on 20 November 2024 sought an eviction order under Rule 66 (wrongly specified in the application form as being brought under Rule 65) 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 had commenced on 10 September 2015.

2. Following initial procedure, the application was accepted by the Tribunal on 18 December 2024 and notified to both Respondents by Sheriff Officer on 2 April 2025.

3. On 17 April 2025, written representations were received on behalf of the Respondent from Govanhill Law Centre, who sought an extension of time in order to make full representations. This was granted by the Tribunal and the time limit was extended to 30 May 2025. Full written representations were submitted on 29 May 2025. Preliminary issues were raised on behalf of the Respondent and it was confirmed that they were opposing the eviction on grounds of reasonableness. Further details of the Respondent's circumstances were provided.

4. On 4 June 2025, written representations were lodged on behalf of the Applicant by their solicitors, Patten & Prentice LLP, in respect of one of the preliminary issues raised and requesting to amend the application from being under Rule 65 to Rule 66.

Case Management Discussion

5. The Case Management Discussion ("CMD") took place by telephone conference call on 18 June 2025 at 10am. It was attended by Mr Kenneth Caldwell, Solicitor of Patten & Prentice LLP on behalf of the Applicant and by Ms Lyndsay McBride, Legal Caseworker, of Govanhill Law Centre on behalf of the Respondent.

6. Following introductions and introductory comments by the Legal Member, reference was made to the written representations lodged on behalf of the Respondent and it was confirmed that their position remained the same.

<u>Preliminary Issues</u>

7. Ms McBride confirmed that she had noted the response from the Applicant's solicitor about the error in stating Rule 65 in the application, rather than Rule 66. She maintained her position that the application should be dismissed as the application did not meet the lodging requirements of a Rule 65 application. Mr Caldwell responded that this had simply been a typographical error, with the wrong box having been ticked on the application form but that it was clear from the application that it was a Rule 66 application, given the documentation and copy notices lodged with it, and the application had been accepted by the Tribunal on that basis. There was no prejudice to the Respondent. Mr Caldwell stated that he had applied 14 days prior to the CMD to amend the application to correct this error, as per the Procedure Rules. The Legal Member confirmed that the Tribunal had considered this matter and would allow the amendment sought to correct this minor technical error.

8. Mr Caldwell then made submissions in respect of the other preliminary issue which had been raised by Ms McBride, concerning the dates stated in the

Notice to Quit and Section 33 Notices. He stated that the date stipulated in the Notice to Quit was 10 September 2024 which was an ish date in terms of the tenancy. Both notices were in valid terms and validly served by Sheriff Officer and gave sufficient notice. The issue raised by Ms McBride was that the expiry date stated in the Section 33 Notice was 6 September 2024, four days before the date in the Notice to Quit. Ms McBride had stated that it was not competent for the Section 33 Notice to come into effect prior to the termination of the tenancy by the Notice to Quit. Mr Caldwell made reference to the terms of Section 33(3) of the 1988 Act which states *"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."* and stated that the dates in the two notices do not require to coincide.

9. Ms McBride stated that she disagreed and referred to Section 33(1)(a) of the 1988 Act in support stating that the short assured tenancy had to have reached its ish when the Section 33 notice was served. The Legal Member referred to the terms of Section 33(1)(a) which is as follows:-

   "(1)……..the First-tier Tribunal shall make an order for possession of the house if the Tribunal is satisfied-
   (a)that the short assured tenancy has reached its ish;"

   The Legal Member confirmed that it was the Tribunal's reading of Section 33(1)(a) that it is at the point of considering whether to grant an order that the Tribunal must be satisfied that the tenancy has reached its ish and that, provided sufficient notice had been given in the two notices and the notice periods had both expired prior to the eviction application being lodged, this was valid. This was the situation here. This preliminary issue raised by the Respondent was accordingly not upheld by the Tribunal and the CMD proceeded.

Reasonableness

10. Mr Caldwell stated that this short assured tenancy was entered into in 2015, meaning that 10 years have now passed and circumstances have changed. The Respondent had come from abroad and was in urgent need of housing at the time. They were husband and wife, with four children at that point, aged 8, 6, 6 and 4. The Property is a ground floor, two-bedroomed flat and the number of occupants was not considered by the Applicant to be too much of an issue at that time, as the children were relatively young and were all girls. However, the situation has changed over the years and the Respondents now have five children, now aged 18,16,16,14 and 9. The living conditions provided by the Property are no longer suitable for the family and the property is clearly overcrowded. There are now seven occupants in the two-bedroom flat, five of whom are technically adults. Although there are reasonably sized rooms in the flat, the Applicant's concern is that the accommodation falls well short of what is now required for the family. There is no 'overcrowding' provision in the tenancy agreement, being a short assured tenancy, so there is no contractual tenancy breach here. Mr Caldwell stated, however, that in the more modern

model Private Residential Tenancy introduced by the Scottish Government, there is a standard compulsory clause regarding overcrowding which must be adhered to by the tenant, otherwise the landlord can seek eviction on these grounds for breach of tenancy. Overcrowding of a Property is therefore a legitimate concern. The Applicant has responsibilities towards his tenants and in connection with the maintenance and repair of the Property and is also concerned that the number of occupants is likely to be impacting negatively on the physical condition of the Property. The Applicant has raised this concern regarding overcrowding with the Respondent several times over the years in the hope that they would look for more suitable housing for the family's needs, but nothing has changed. Eventually the Applicant considered that they had no option but to serve notice on the Respondent to bring the short assured tenancy to an end, which they did in July 2024. The Applicant is an experienced landlord with 6 rental properties in total. There is no intention to sell the Property at the present time. The Applicant has not been contacted by the local authority about the overcrowding situation, although the local authority were served with the Section 11 notice in the usual way, bringing the proposed eviction to their attention. Mr Caldwell stressed that relations between the parties have been otherwise amicable and there have been no issues with payment of rent, which he stated was currently £495. He appreciates from the Respondent's representations that they are settled in the local area and that their children are all educated at local schools or are in further education locally. He also appreciates that renting a larger property via a private let is likely to be more expensive than the Respondent's current rent and that there is a housing crisis at the moment. However, he considers that reasonableness needs to be looked at from both sides. The Applicant is entitled to seek to recover their own property in the circumstances and, as valid notice was served in July 2024, the Respondent has had an ample period of time to seek alternative accommodation. Mr Caldwell submitted that the Respondent will have an entitlement to social housing and, given the number of children and the current overcrowding situation, considers that this is a situation where the very granting of an eviction order would be likely to speed up the process of the Respondent being allocated alternative housing. Without this, nothing is likely to change and the current situation can only get worse, as the children get older and continue to grow. Mr Caldwell submitted that the current situation could not be allowed to continue indefinitely. He said that there are really no disputed facts here, as the Property is clearly far too small for the family's needs. He does not consider that there is accordingly a need for an Evidential Hearing and he is therefore instructed to seek an eviction order today. However, the Applicant is willing to agree to an extension in the execution date of any order to allow the Respondent more time to work with the appropriate authorities to secure alternative housing.

11. Ms McBride stated that it is accepted that the Property is a two-bedroom flat and that there are seven occupants and five children. However, the Respondent is happy there and wish to remain in the Property. She wished to take issue with what Mr Caldwell had stated regarding the rent being £495. She stated that the current rent is £656. There had been a previous attempt by the Applicant to raise the rent from £625 per month to £750 per month which was challenged on behalf of the Respondent. The increase was then made from

£625 to £656. Ms McBride stated that the Respondent's income was not high enough to afford a private rent as they are ideally seeking a four or five bedroom property. The Respondent has been looking for alternative accommodation since they were served notice but property is very hard to source at the moment due to the housing shortage crisis and high rents. Application has been made to a number of housing associations but Ms McBride did not know specifically how many or which housing associations had been contacted by the Respondent. Ms McBride stated that, if an eviction order was granted, a homeless application could be made to the local authority but that the local authority will not accept an application at this stage. As to the Respondent being given priority due to the number of children and the current overcrowding situation, Ms McBride stated that the focus is generally on younger children but that the overcrowding may have a bearing on priority. Ms McBride stated that the temporary accommodation provided may initially involve hotel accommodation which would not be a good situation for the Respondent's family, particularly as they are all settled in education locally. Ms McBride stated that, if the Tribunal was minded to grant an eviction order today, a delay of 3 months on the eviction date was sought to assist the Respondent with their housing situation. As to the family's income situation, Mr Begum is working for a local restaurant and currently earns £249 per week from this. His wife does not work and their 18 year-old daughter is a student and in receipt of a student loan and bursary. The family has a Universal Credit top-up but would require to make an additional Housing Benefit application if they go into temporary accommodation, as the rents for this are much higher. There was further discussion about the applications made already to housing associations but Ms McBride was not able to offer any further information regarding this. She is aware that the Respondent will have been allocated additional points given these ongoing proceedings as they are regarded as being in 'unstable' accommodation. She is not aware of any health or other circumstances related to either Respondent or any of their children which would affect their number of points or priority for housing. Ms McBride stated that the Respondent is in a difficult situation with their housing situation but are continuing to try and find something suitable. She reiterated that a three-month extension on any order granted was sought.

12. Mr Caldwell was asked for any further comments. He stated that he is aware that there is a dilemma for the Tribunal here. However, he reiterated that nothing will change unless an eviction order is granted and that the granting of an order would ultimately assist the Respondent in obtaining alternative, more suitable housing. Given what Ms McBride has stated regarding seeking a three-month delay and that it is only when a Charge for removing is served that the local authority will take action, he suggested a two-month delay instead (as this would speed up the timeframe for a Charge being served). Ms McBride clarified that the fact of an order being granted would allow them to progress matters on behalf of the Respondent and reiterated that a three month period would be more beneficial in this regard.

13. The Tribunal Members adjourned to consider the application in private and, on re-convening, confirmed that the Tribunal was persuaded to grant the eviction order today as they had been addressed in considerable detail on behalf of both

parties at the CMD, had explored all the issues in detail and did not consider that, in the circumstances of this case, an Evidential Hearing would serve any further purpose. However, the Tribunal would grant the request on behalf of the Respondent for a three month extension on the eviction date, to provide some additional time for the respondent to source suitable alternative accommodation for their family. Parties were thanked for their attendance, preparation for, and participation at the CMD.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.

2. The Respondent is the joint tenant of the Property by virtue of a Short Assured Tenancy which had commenced on 10 September 2015.

3. The Applicant ended the contractual tenancy by serving on the Respondent a Notice to Quit and Section 33 Notice dated and served by Sheriff Officer on 5 July 2024, specifying the end of the notice period in terms of the Section 33 Notice as 6 September 2024 and terminating the tenancy in terms of the Notice to Quit on 10 September 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.

4. The Respondent has remained in possession of the Property following expiry of the notice period(s).

5. This application was lodged with the Tribunal on 20 November 2024, following expiry of the notice period(s).

6. The Property is a two-bedroom ground floor flat.

7. The Respondents have five female children, aged 18,16,16,14 and 9, who reside in the Property with them.

8. The Applicant wishes to recover the Property as they have concerns regarding the Property being overcrowded.

9. The Respondent opposed the application on grounds of reasonableness.

10. The Respondent sought an extension on the execution date of the eviction in the event that the Tribunal decided to grant an order.

11. The Applicant was amenable to such an extension.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, the detailed written representations lodged on behalf of the Respondent and the oral information and submissions provided on behalf of the Applicant and the Respondent by their representatives at the CMD.

2. The Tribunal considered the application by the Applicant to amend the rule number under which the application had been brought from 65 to 66 under Rule 14A of the Procedure Regulations. This had been raised by the Respondent as a preliminary issue and the Tribunal heard submissions from both parties on this matter at the outset of the CMD. The Tribunal was satisfied that the rule number error in the application form tick-box was simply a typographical/technical error by the Applicant's representative when making the application and had been of no prejudice to the Respondent. The application was otherwise complete and in order in terms of a Rule 66 application and it had been clear from the outset that this was intended as a Rule 66 application. Accordingly, the Tribunal allowed this amendment to the application.

3. The Tribunal was also satisfied that the 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. The Tribunal had also heard submissions from both parties on this matter at the outset of the CMD, as the Respondent had raised a preliminary issue concerning the 'end' dates contained in the two Notices. Having heard submissions and considered the terms of Section 33 of the 1988 Act, the Tribunal was satisfied that the Respondent's preliminary point should not be upheld or the application rejected on this basis. Reference is made to paragraphs 8 and 9 above.

4. 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.

5. As to reasonableness, the Tribunal considered the background to the tenancy and application and the Respondent's position in relation to the matter, together with their current family circumstances, all as narrated in paragraphs 10, 11 and 12 above. The Tribunal had sympathy for the Respondent's wish to remain in the Property which had been their family home for almost ten years and the fact that they were settled in the local area. The Tribunal also appreciated the difficulties the Respondent had encountered in seeking alternative accommodation for their large family. However, it was admitted on behalf of the Respondent that the Property was overcrowded, given the number of occupants and their ages living together in a two-bedroom flat. It was also conceded that they were ideally looking for at least a four-bedroom property which the Tribunal considered was a clear indication that the existing Property

fell far short of the family's current accommodation needs. The circumstances had changed over the period of the tenancy, as the Respondent now had a fifth child and the children were getting older, three of them being technically adult children already. The Tribunal accordingly understood the Applicant's concern in this regard and their decision to serve notice, having raised the issue and expressed their concern regarding the overcrowding situation to the Respondent several times in previous years. It was noted that relations between the parties had generally been amicable and there was no suggestion put forward on behalf of the Respondent that there was any 'ulterior' motive on the part of the Applicant in wishing to recover possession. The Tribunal also took account of the Applicant's submissions regarding overcrowding and housing conditions generally being something that is now given much more prominence than was perhaps previously the case and 'overcrowding' of a property being specifically included as a mandatory tenancy clause in the Scottish Government's Model Private Residential Tenancy which has been applicable since 2017. In all the circumstances, the Tribunal was persuaded that the Applicant's stated reason for wishing to recover possession of the Property outweighed the factors which had been put forward on behalf of the Respondent in respect of reasonableness.

6. However, in recognition of the fact that the Respondent appeared to be in receipt of a fairly limited income and undoubtedly faces difficulties in securing an alternative property more suitable to the family's accommodation needs, the Tribunal considered that it was appropriate to grant the three-month extension sought on behalf of the Respondent in respect of the eviction date, to give a period of additional time for the Respondent to find alternative housing, with the assistance of their representatives at the local law centre.

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 **18 June 2025**
Date