



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/24/4065

Re: Property at Flat 1/1, 5 Morley Street, Glasgow, G42 9JA (“the Property”)

Parties:

Mrs Frances Donaghy, 12 Whitemoss Avenue, Glasgow, G44 3ES (“the Applicant”)

Ms Annemarie Robinson, Flat 1/1, 5 Morley Street, Glasgow, G42 9JA (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. The application received on 3 September 2024 sought an eviction order under Rule 66 on the basis that the Short Assured Tenancy had been brought to an end by service of the relevant notices. Supporting documentation was submitted, including a copy of the tenancy agreement, AT5, Notice to Quit, Section 33 Notice and section 11 Notice to the local authority. The Short Assured Tenancy had commenced on 28 January 2011.
2. Following initial procedure, the application was accepted by the Tribunal on 13 December 2024 and notified to the Respondent by Sheriff Officer on 20 June 2025, together with details of the Case Management Discussion (“CMD”) which

had been scheduled. Representations were invited from the Respondent but none were received.

Case Management Discussion

3. The CMD took place by telephone conference call on 7 August 2025 at 2pm. It was attended only by the Applicant, Mrs Frances Donaghy, who was accompanied by her husband, Mr William Donaghy, who is the joint owner of the Property. The Respondent did not attend, although the Tribunal delayed the commencement of the Tribunal by five minutes to give her an opportunity to join late.
4. Following introductions and introductory comments by the Legal Member, the Applicant was asked if they had received any recent communications from the Respondent, or knew of her intentions regarding this matter. It was confirmed that they last had contact with the Respondent around four weeks ago and that she has recently given birth to twins on 12 June 2025. They stated that the Respondent has been involved with various agencies in the past, including the housing section of the local authority, and they understand that she had first made application for housing around ten years ago. However, they are not aware of anything happening with that at the moment. Mrs Donaghy confirmed that she had originally sent the Section 11 Notice to the Respondent's Housing Officer at the local authority, whom the Respondent was already in contact with. The Housing Officer told her to send it to the correct department but also told Mrs Donaghy that she could not evict the Respondent on expiry of the notice period and had to wait for the Tribunal process to conclude.
5. The background to the application was that the Applicant wished to recover possession of the Property as it is overcrowded and also in need of substantial refurbishment. It was explained that the Respondent now has five children, including the twins, the eldest of whom is around 15 years old. It is a two-bedroom flat so is now seriously overcrowded. The Applicant is aware that the children's father is at the Property from time to time but do not know that he is necessarily living there with the Respondent and children. The Respondent definitely needs larger accommodation, which the Applicant thinks the Respondent accepts, as well as needing some additional support, particularly after the birth of the twins. The Applicant also stated that the Property is in need of refurbishment as there has been a long tenancy of 14 years. The Property condition has deteriorated over the years and many repairs have been needed due to damage caused by the children. The Applicant thinks that the Respondent was maybe badly advised by the local authority who seem to have told her that she would not be provided with alternative housing if she moved out of the Property when notice was served. This seems to have alarmed her, as a result of which she has stayed put and they have all been stuck in this position for some time. She has now had the twins which makes the overcrowding situation even worse.
6. The Applicant confirmed that they have had quite a good relationship with the Respondent and really did not want to make her homeless, given her

circumstances, but it is an awkward situation as they also need to recover possession of the Property. They think they have been very fair landlords to the Respondent and have kept the rent low throughout. There have occasionally been rent arrears or late payment of rent by the Respondent, but this has not been an issue recently and is not a factor. However, they are both now pensioners, aged 66, and are moving to divest themselves of their let properties. They have sold two other properties in the past year and may decide to sell this one too, but have not made a final decision on that yet. They cannot sell all their properties in the same financial year due to tax implications and Mr Donaghy stated that the properties were basically to provide him with a pension, as he does not have a private pension. They also find being landlords very stressful now as the market has changed so much, with there being so many additional legal requirements and the housing crisis.

7. Mrs Donaghy was also asked for further information regarding service of the notices on the Respondent, an issue which had been raised by the Tribunal in the earlier stages of the application. It had been noted by the Tribunal that the Notice to Quit and Section 33 Notice were both dated 2 April 2024 and that the Applicant had produced written confirmation from the Respondent, firstly that she had received the notices and then, subsequently, that she had received them from the Applicant on 2 April 2024. Mrs Donaghy confirmed that she had hand delivered the notices to the Property on that date and put them through the letterbox as the Respondent was not at home. She later telephoned the Respondent to confirm that she had received them, which she had. She subsequently asked for written confirmation from the Respondent when the Tribunal queried this matter and lodged this with the Tribunal. She was asked why she had chosen that method of service, as opposed to postal service or service by Sheriff Officer. She confirmed that it was an older tenancy agreement and she thought that it stated that service of notices was to be by physical delivery. She conceded, however, that she did not have a copy of the tenancy agreement to hand to check this.
8. The Applicant was also asked about their views on the Tribunal granting an extension of the usual timescale for the eviction order being enforceable, if the Tribunal was minded to grant eviction. They confirmed that, although they find the current situation very stressful and wish to recover possession of the Property, they do wish to be compassionate and would be agreeable to an extension on the usual timescales of around one or two additional months, to give the Respondent some additional time to contact the local authority and find alternative housing.
9. The Tribunal Members adjourned to consider the application in private and, on re-convening, confirmed that the Tribunal had decided, given the circumstances, to grant the eviction order today, but subject to an extension of approximately 6 weeks on top of the normal timeframe for eviction. It was explained that, in practical terms, the date which will be specified in the order as the earliest date for enforcement of the eviction would be 10 weeks from today. The date to be specified in the order will accordingly be **16 October 2025**. It was further explained that the Tribunal's written Decision in this regard would be issued shortly and it was hoped that the Respondent would make

immediate contact with the local authority and that this would result in the Respondent being prioritised for re-housing, particularly given her family circumstances. It was also hoped that contact would be ongoing between the parties meantime and that the situation would be resolved before the eviction order became enforceable. Mr and Mrs Donaghy were thanked for their attendance and participation at the CMD.

Findings in Fact

1. The Applicant is the joint owner and the landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Short Assured Tenancy which had commenced on 28 January 2011.
3. The Applicant ended the contractual tenancy by serving on the Respondent a Notice to Quit and Section 33 Notice dated and served by the Applicant in person on 2 April 2024, which the Respondent had acknowledged in writing.
4. The notices specifying the end of the notice period as 28 July 2024, an ish date in terms of the tenancy agreement.
5. Both notices were in the correct form, provided sufficient notice and were served validly on the Respondent.
6. The Respondent has remained in possession of the Property following expiry of the notice period.
7. This application was lodged with the Tribunal on 3 September 2024, following expiry of the notice period.
8. The Property is a two-bedroom flat.
9. The Respondent has five children, both male and female, the eldest of whom is around 15 years old and the youngest being twins, aged around two months old.
10. The Applicant wishes to recover the Property as it is overcrowded, in need of refurbishment and also due to age and circumstances of the Applicant and her husband, the joint owner.
11. The Applicant and her husband are both retired, aged 66 and have recently sold two of their other rental properties.
12. The Respondent did not lodge any representations, nor attend the CMD.
13. The Applicant was amenable to an extension on the execution date of the eviction in the event that the Tribunal decided to grant an order.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, together with the oral information and submissions provided by and on behalf of the Applicant at the CMD.
2. The Tribunal was also satisfied, having heard further from the Applicant at the CMD that the preliminary requirements of 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. It was noted by the Tribunal that the Applicant's position with regard to service of the notices was supported by written communications from the Respondent confirming this matter.
3. Section 33(1) of the Act states that an order for possession shall be granted by the Tribunal if satisfied that the short assured tenancy has reached its finish; that tacit relocation is not operating; that the landlord has given to the tenant notice stating that he requires possession of the house; and that it is reasonable to make an order for possession. The Tribunal was satisfied that all requirements of Section 33(1) had been met.
4. As to reasonableness, the Tribunal considered the background to the tenancy and the Applicant's stated reasons for her wish to recover possession of the Property. Although the Applicant had reasons of her own, related to her and her husband's age and circumstances for wishing to recover the Property, the Tribunal considered that the Respondent's own circumstances and the overcrowding situation at the Property was also a legitimate concern. The Tribunal agreed with the Applicant's position that the current living circumstances of the Respondent and her five children were far from satisfactory and unsustainable as the family was clearly in need of larger accommodation. The Tribunal had sympathy for the Respondent, given that she had been living in the Property for 14 years, had five children, and appeared to have been advised that she had no option but to remain in the Property until the Tribunal process had concluded. It appeared from the Applicant's submissions to the Tribunal that the Respondent had perhaps been seeking alternative social housing for a number of years and, indeed, had a Housing Officer and perhaps other local authority supports already in place. It was noted that relations between the parties had been relatively amicable throughout and that they appeared to be in fairly regular contact. The Tribunal did not consider that the Applicant had taken the decision to seek recovery of the Property lightly and noted that she had given the Respondent some extra time, in addition to the required notice period, before submitting her application to the Tribunal. Although the Respondent had not lodged representations or attended the CMD, which would have been preferable, it appeared that she had cooperated with the Applicant in providing written confirmation regarding service of the notices and the Tribunal saw no reason to consider that she was opposed to the eviction. In all of the circumstances, the Tribunal was persuaded that it was

reasonable to grant the eviction order sought and to grant it at this stage. The Tribunal had no material before it contradicting the Applicant's position and did not therefore consider that there was any requirement for an Evidential Hearing.

5. However, in recognition of the fact that the Respondent has a large family and would require to contact the local authority in order to secure alternative housing more suitable to the family's accommodation needs, the Tribunal considered that it was appropriate to exercise its discretion and apply an extension of around six weeks over and above the usual timeframe that would apply for the order being enforceable. Accordingly, the date to be specified in the order to follow would be 10 weeks' hence, namely **16 October 2025**.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

N Weir

Legal Member/Chair

7 August 2025
Date