



**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/24/4697

Re: Property at 88 Moraine Drive, Glasgow, G15 6HA (“the Property”)

Parties:

Margaret Bonis, 17 Breadie Drive, Milngavie, Glasgow, G62 6LS (“the Applicant”)

Senga Gracie, 88 Moraine Drive, Glasgow, G15 6HA (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. This is an application by the Applicant for an order for possession on termination of a short assured tenancy in terms of rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The tenancy in question was a short assured tenancy of the Property by the Applicant to the Respondent said to commence on 27 September 2015 but the actual commencement date became an issue within the application.
2. The application was dated 10 October 2024 and lodged with the Tribunal on that date. The application relied upon a Notice to Quit and notice in terms of section 33 of the Housing (Scotland) Act 1988, both dated 4 January 2024, providing the Respondent with notice (respectively) that the Applicant sought to terminate the short assured tenancy and have the Respondent vacate, each by 26 September 2024. (We note that the Notice to Quit actually bears a date of 4 January 2023)

but this would appear to be a typographical error.) Evidence of service of the said notices by Sheriff Officers on 4 January 2024 was included with the application.

3. Evidence of a section 11 notice dated 10 October 2024 in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Glasgow City Council was provided with the application.

Procedural background

4. The application, and a conjoined application for an order for payment regarding rent arrears (CV/24/4698), called at an initial case management discussion ("CMD") on 3 June 2025. The CMD Note for that date is referred to for full detail but, in summary:
 - a. The Respondent accepted that she was in arrears by £21,878.88 for the period to 16 May 2025 (which, as rent was £625 per month, was over 35 months of arrears). She said that the rent was withheld due to issues with repairs at the Property, which were not addressed. She said that she had originally held back the money in a separate account but had suffered financial pressures and started to use the funds. The wants of repair were said to include the kitchen and bathroom both being unusable (so she was unable to cook, and her children required to wash at the local sports centre). Other issues included problems with the flooring in the kitchen. The Applicant disputed that such significant repairs issues were present. In regard to any delay in works that may have occurred, the Applicant attributed these to the Respondent's lack of communication.
 - b. The Respondent gave details of significant health-issues and said she was housebound. She wished for her and her family to remain at the Property, notwithstanding the repairs issues that she complained about.
 - c. The Tribunal itself identified that the Tenancy Agreement being relied upon stated that it commenced on 27 September 2015 but appeared to be signed by both parties on 21 October 2015, which was the only date that bore to be on the AT5. The Respondent was said to have been in occupation on previous tenancy agreements since 2012. The Applicant's agent further provided submissions and authorities that they said explained the documents to be compliant with the Tenancy being a competent short assured tenancy. The Respondent made no submissions on the competency of the Tenancy.
5. Further to the discussion at the initial CMD, the applications were both adjourned to a further CMD for:
 - a. The Respondent to seek legal advice and/or housing support on her position and the applications made by the Applicant. The Tribunal expected the Respondent to obtain the assistance of her children in securing that advice/support. (The CMD was told that she had two adult children living at the Property, both in tertiary education.)
 - b. The Respondent to lodge detailed written submissions as to her position no later than 14 days prior to the date of the adjourned CMD, with supporting evidence such as dated photographs.

- c. The Applicant to take formal steps to inspect the Property which the Respondent required to co-operate with.
 - d. The Applicant to produce evidence of repairs required to the Property as intimated by the Respondent from 2022.
 - e. For further discussion as to whether the Tenancy was a short assured tenancy.
6. Prior to the second CMD, two Inventories of Productions were received from the Applicant's agent with evidence of work and inspections undertaken at the Property from 2021 through to September 2025. Significant work appeared to have been commissioned since the initial CMD (notably to the kitchen and bathroom), though the reports and invoices lodged also referred to the magnitude of the wants of repair being significantly lower than complained of by the Respondent at the initial CMD. Further, an inspection report from June 2023 was lodged that referred to only minor wants of repair (damage to kitchen flooring and a leaking radiator) being outstanding at that time. No submissions or documents were lodged by the Respondent on any subject nor to address the content of the Applicant's Inventories.

The Hearing

7. On 10 October 2025 at 10:00, at a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting remotely by telephone conference call, we were addressed by Bernadette Baxter, solicitor, Mellicks, for the Applicant and by the Respondent personally.
8. We raised with the Respondent the lack of any further submissions or documents lodged by her. She said that she had all the documents compiled but she did not know where to send them. She also said that she had expected that by now she would have had a solicitor who could lodge them for her. She explained at length how she had thus far failed to obtain a solicitor or advice centre able to represent her, having variously: struggled to find a legal aid solicitor at all; having found an adviser who referred her to a solicitor who could then not act; and having been referred to Shelter who could only give initial advice due to lack of capacity. She was awaiting further calls back from other potential advisers. She explained that she was seeking advice both on rehousing and on her case. In regard to rehousing, she believed that she had been on the list with Glasgow Housing Association/ Wheatley Homes for some time and wanted an adviser who could investigate her status for her (and that she had not made recent enquiries herself with the local authority or housing association). In regard to the legal issues in the case, she awaited legal advice before she felt she could:
- a. Comment whether or not she disputed the competency of the Tenancy or the Notice to Quit and section 33 notice; or
 - b. Comment whether or not she conceded the full sum sued for. On this point, however, she accepted that she had not paid any arrears and accepted the Applicant's updated figure that rent arrears (for the period to 16 October 2025) were £25,003.88.

9. We asked the Respondent to comment on the recent repairs. On this, she was difficult to follow, rarely providing direct answers to any query. We did note that she confirmed that her complaints about the bathroom were now resolved and that she did now have a working cooker, though she said that it frequently “tripped” and that she had asked the Applicant’s letting agent to send out someone to check it. She said that new flooring had only just gone down in the kitchen though she believed it had just been placed over an underfloor which she believed was still damp. She believed the Property had “rising damp” which was still unaddressed. She also referred to a crack in the boiler cupboard but did not identify any reason why this affected the quality of her occupancy. She said that some of these remaining matters had been discussed with “Paul”, from the Applicant’s letting agent, during the recent inspection (which inspection was called for at the initial CMD). She was also insistent that there were reports that referred to her having raised issues historically, in particular that she did not have a working cooker since 2018 and the issues with damp. The Respondent made specific reference to allegedly discussing “rising damp” with an “inspector” in 2022 and to the inspection report of June 2023 lodged by the Applicant. When the terms of the June 2023 report were read back to her (noting that the only existing wants of repair that she is listed as raising at the inspection were damage to kitchen flooring and a leaking radiator) she provided no further answer, except that she had further documents vouching her history of reporting issues, being the documents she had not yet lodged.
10. The Respondent repeated on a number of occasions that she disputed claims by the Applicant and her letting agent that she had failed to make contact on issues, or had failed to allow access. She believed that not all contractors’ visits had been agreed in advance, and suggested that some contractors who just “popped” by may have not obtained entry, though she attributed fault in any such cases to the letting agents having failed to arrange the visit properly. She made specific reference to a letter from the letting agent, lodged by the Applicant, which referred to specific issues with the flooring contractor and an allegation that the Respondent had failed to make contact with the contractor. The Respondent denied the contents of the letter. She said that when the contractor recently visited he confirmed to her that he had said no such thing to the letting agent. She mused that she should have obtained a statement from him but had not done so. She further complained that on some occasions contractors had visited but their work had not resolved the problems.
11. In regard to the arrears, the Respondent said that she was keen to start payment but had no bank details. She said that she had asked “Paul” for these at the inspection and he had promised to send them to her, but they had not been received. When we asked what she intended to pay, she lacked an answer and said she would need to consider her finances. She thought it likely that she would pay the current rent plus £50 to £80 a month against whatever arrears figure she thought remained due (once she had full legal advice). She did not rule out that she may be liable for the full arrears claimed of £25,003.88. She further explained that she received benefits payments direct for rent, and initially put money aside. She then required to spend it on other costs, such as credit card debt. When asked by us how she now intended both to pay the rent and a further sum towards

arrears, she said that as she was able to use a cooker again this would save money which was previously spent on carry-out food.

12. In regard to further information that the Respondent offered to provide, she wished time to lodge further evidence that she believed would vouch that there were long periods where she had reported repairs issues and the work was not completed promptly. She further sought legal advice so she could consider whether she did dispute the competency of the Tenancy or the notices relied upon, or disputed liability for the full amount of arrears.
13. In regard to her health, the Respondent said that she still had continuing health issues (as reviewed in the CMD Note from June 2025). She said that the only place she really left her home to go to was to hospital appointments. She said that the stress of the Tribunal process was affecting her health. In regard to her organisational ability, she conceded she was “all over the place” with matters regarding her housing needs. When asked whether her children could assist in providing or at least obtaining advice and support, she was insistent that she could not ask them as it would add further stress. The Respondent thought that in particular her daughter, whom she described as having recently graduated from a law degree, would not be able to cope with such additional pressure.
14. The Applicant’s position on the repairs was materially different and is reviewed further below in regard to issues of reasonableness. Regarding the competency of the notices, and whether the Tenancy was a short assured tenancy, on discussion at the second CMD, the Applicant’s agent advanced three arguments all based on the same factual matrix:
 - a. There had been only one short assured tenancy that commenced on 24 April 2012. The lease document was signed on 17 March 2012, the same day as an AT5 form was served upon the Respondent. The tenancy commenced on 24 April 2012. This then continued by tacit relocation after its ish date (lease end date), though the Applicant did not provide a copy of these documents nor provide the original ish date. At some point between then and 2015, a further AT5 was provided and a further lease document was signed setting out a new ish. (The agent did not have the dates for this middle lease, and also thought there might even have been more than one lease in the middle.) This then continued by tacit relocation and, on 21 October 2015, the final AT5 was provided and the final lease document signed, setting out a new ish of 26 September 2016. This then continued by tacit relocation until the Notice to Quit and section 33 notice that were relied upon in this application. In each of these three agreements, the material terms were the same, in particular parties and the rent. (The Respondent confirmed that the landlord and rent was unchanged from 2012.) The Applicant thus submitted that the only AT5 that mattered was the AT5 of 17 March 2012 and it made the entire tenancy from 24 April 2012 onwards a single short assured tenancy, with the subsequent two (or more) tenancy agreements simply agreeing new end dates.
 - b. That there were three (or more) short assured tenancies. The first one ran from 24 April 2012 until the date of the second tenancy agreement. An AT5 was served immediately prior to the second tenancy agreement, and the

signing of the second tenancy agreement was the parties agreeing that it replaced the first agreement. This was repeated at least once more. The agreement signed on 21 October 2015 had an AT5 served immediately before it and the signing of the agreement of 21 October 2015 was the parties agreeing that this would replace the immediately prior agreement. The reference in this final agreement to it having a “commencement date” of 27 September 2015 was to be ignored as *pro non scripto* (as if not written) as clearly it only commenced on 21 October 2015.

- c. That there were three (or more) short assured tenancies but the final one did commence on 27 September 2015, as it says in the agreement, even though it was not documented and signed until 21 October 2015. The AT5 requirement is in terms of section 32(2) of the 1988 Act: the AT5 is to be “served before the creation of the assured tenancy”. Although it commenced on 27 September 2015, it was only “created” on 21 October 2015 when it was signed, and the AT5 was served on that day before its creation. The Applicant also relied upon clause (Two) of the Schedule to the Tenancy Agreement that had the Respondent accepting that an AT5 had been “received, prior to the commencement date, a Notice in Form AT5”. (We were not addressed on the use of “commencement date” rather than “creation date” in that clause, nor how the Applicant sought to square that clause with the acceptance that the AT5 was served long after the contractual “commencement date” of 27 September 2015.)

As we have said above, the Respondent had no position on any of these three arguments, but said she wished legal advice on the issues. She accepted that she had signed more than one agreement over the period of occupation.

15. In regard to further procedure, the Applicant sought decree at the continued CMD, if failing a final hearing set. The Applicant relied upon the following additional submissions about the reasonableness of eviction and of such procedure:
 - a. The Applicant was 71 and did not wish to continue as a landlord. She had inherited the Property from her father and had no other rental properties. She was suffering from ill-health which was exacerbated by the issues with the Tenancy, and had been expending significant sums on repairs with no rental income.
 - b. In regard to the Respondent’s conduct, she had received an opportunity to engage with the Tribunal process in full and had not done so. This lack of constructive engagement was mirrored in the Tenancy. She had in the past asked for repairs and, once completed, just complained about other issues that she had not raised before. An attempt to use the Safe Deposit Scotland resolution process had failed due to the Respondent’s failure to respond to SDS.
 - c. The Applicant further stated that the Respondent’s complaints were not always borne out when inspected, and reference was made to the documents lodged from their contractor’s recent investigations where the plumber had found no material issue stopping the bath being used, and that two of the four hob rings had still been working (albeit the cooker did need replaced).

- d. The Applicant further implied that the Respondent's actions and complaints were not entirely in good faith. Reference was made to the lack of any mention of issues with the cooker in the June 2023 inspection report, and that the Respondent had declined to agree to the rent element of her benefits being paid direct to the Applicant.
- 16. The Respondent sought a further continued CMD so as to seek legal advice, and lodge further documentation.
- 17. No order for expenses was sought.

Findings in Fact

- 18. By written lease dated 17 March 2012, the Applicant let the Property to the Respondent by lease with a start date of 24 April 2012 ("the Tenancy").
- 19. The Tenancy was a short assured tenancy in terms of the Housing (Scotland) Act 1988 further to the Applicant issuing the Respondent with a notice under section 32 of the 1988 Act (an "AT5") on 17 March 2012, prior to commencement of the Tenancy.
- 20. During the duration of the Tenancy, the parties entered into further written agreements, documenting new ish dates. The final such agreement was signed by the parties on 21 October 2015, agreeing that the Tenancy was going to continue at least until 26 September 2016.
- 21. The Tenancy thereafter continued by tacit relocation after 25 September 2016.
- 22. On 4 January 2024, the Applicant's agent drafted a Notice to Quit in correct form addressed to the Respondent, giving the Respondent notice that the Applicant wished her to quit the Property by 26 September 2024.
- 23. On 4 January 2024, the Applicant's agent drafted a Section 33 Notice under the 1988 Act addressed to the Respondent, giving the Respondent notice that the Applicants required possession of the Property by 26 September 2024.
- 24. 26 September 2024 is an ish date of the Tenancy.
- 25. On 4 January 2024, Sheriff Officers competently served each of the notices upon the Respondent. The Respondent was thus provided with sufficient notice of the Applicant's intention that the Tenancy was to terminate on 26 September 2024.
- 26. On or around 10 October 2024, the notice period under the notices having expired, the Applicant raised proceedings for an order for possession with the Tribunal, under rule 66, the grounds of which being: that the Tenancy had reached its ish; that tacit relocation was not operating; that no further contractual tenancy was in existence; that notice had been provided that the Applicant required possession of the Property all in terms of section 33 of the 1988 Act; and that it was reasonable to make the order.

27. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon Glasgow City Council on 10 October 2024 on the Applicant's behalf.
28. The Applicant is 71 years old. She has no other rental properties.
29. The Applicant seeks to sell the Property so as to discontinue being a landlord in consideration of her age and the maintenance costs, and further in light of the sizable arrears that have accumulated.
30. The Respondent is in rent arrears of £25,003.88 as of 10 October 2025, having not made any payments since 17 October 2024.
31. The Respondent lives in the Property with her two adult children.
32. The Respondent suffers from health conditions that limit her mobility.
33. The Respondent has reported wants of repair at the Property which the Applicant has materially addressed in full.

Reasons for Decision

34. The application was in terms of rule 66, being an order for possession upon termination of a short assured tenancy.
35. Although the Respondent reserved her position on whether the Tenancy was a short assured tenancy, and thus whether the necessary notices had been served with sufficient notice, we required to consider the matter in light of the unclear picture produced by the application papers. We do, however, stress that despite ample opportunity to confirm whether she sought to defend on such grounds, the Respondent tendered no dispute as to the validity of the notices or on the nature of the Tenancy.
36. The habit of landlords to issue new tenancy agreements, rather than document agreements to agree a new ish date or raise the rent, or to utilise contractual or statutory rent review provisions, has frequently resulted in situations such as those presented by this application. Here there are a succession of "short assured tenancy agreement" between the same parties for the same property. It is possible that in some cases parties genuinely sought to replace one with another (per the Applicant's second and third arguments) but it should not be assumed, especially where little to nothing changes in the agreed terms. In this case, the Applicant initially sought to adopt the most convoluted of the arguments, seeking to define 21 October 2015 as a "creation" date of the Tenancy, and providing authorities that were said to support this argument. We decline to analyse this legal argument in full as further information from the Applicant disclosed that none of the Tenancy terms changed from 2012 until the end of the Tenancy, except that there were at least two further signed

agreements between the parties which agreed new ish dates. The obvious interpretation of the factual information provided was there was a single short assured tenancy, that it lasted from 24 April 2012 onwards, and that it had an AT5 served prior to its creation (and its commencement). The subsequent agreements were effectively agreements on extension only. That we were not shown the original set of documents did give us pause for consideration, but the Respondent did not dispute the factual information provided. We are thus satisfied that: there was a short assured tenancy; in terms of the subsequent variation, 26 September 2016 was an ish date; and it continued by tacit relocation until 26 September 2024 when the Notice to Quit and section 33 notice issued validly brought it to an end.

37. We require, in terms of the 1988 Act as currently amended, to consider “that it is reasonable to make an order for possession”. On this, the Respondent opposed on the basis of her health and desire to preserve her family home. She further disputed that the sizable arrears should be weighed against her (as she held that she had validly retained rent due to the repairs issues). We were satisfied that the Applicant’s reasons for seeking eviction were reasonable in that she sought to sell the Property in consideration of the economics of remaining a landlord at her age. The Respondent’s argument against, based on her health, was not doubted but it was also not vouched. No evidence was provided as to why she would be unable to move, and she accepted that she was on a housing waiting list, so clearly was willing to consider moving out of the Property. We were satisfied that it was reasonable to evict even in the absence of considering the arrears vs repairs issue.
38. When the issue of the arrears was included, the Applicant’s argument for reasonableness only strengthen. Taking the Respondent’s claims at their highest (which, due to her failure to lodge documentation, we struggle to do) the repairs issues are now resolved but she had no means to pay the arrears that had developed within a reasonable time. Even if she was able to prove a material detriment, and thus seek a significant abatement of rent, she was unlikely to pay such a hypothetical reduced balance within a reasonable time. (For the avoidance of doubt, we have granted the order for payment in the conjoined action but without prejudice to the Respondent’s right to seek damages should she lodge her own claim with appropriate vouching.)
39. Finally, in regard to further procedure, we accepted the Applicant’s motion that a decision fell to be made at this time. For the reasons given above, we saw that eviction was reasonable even without considering the alleged repairs issues or the rent arrears. Therefore, it was not necessary to continue so as to consider the vouching held by the Respondent that she said addressed historic repairs complaints and the Applicant’s alleged failure to address these timeously. This left only the question of considering the legal questions without the Respondent having received legal advice or provided full submissions. On this we were satisfied that sufficient time had passed. The question about the AT5 was raised by the Tribunal itself. The Respondent has never commented on it, other than to say that she wanted to obtain legal advice. She was given a substantial time to

obtain such advice and had still failed to do so. She did not attempt to express her own position on the issue.

40. The Rules allow at rule 17(4) for a decision to be made at a CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we were thus satisfied to consider matters at the continued CMD and we did so. In the circumstances before us, we were thus satisfied that it was reasonable to evict and so grant an order for eviction at this time in normal terms.

Decision

41. In all the circumstances, we make the decision to grant an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988.

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.

Joel Conn

10 October 2025

Legal Member/Chair

Date