

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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 24 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)**

**Chamber Ref: FTS/HPC/EV/24/5886**

**Re: Property at Flat 1, 98 Orchard Brae Avenue, Comely Bank, Edinburgh, EH4 2GB (“the Property”)**

**Parties:**

**Mrs Lynne Robertson, 2 West Harwood Crofts, West Calder, Edinburgh, EH55 8LT (“the Applicant”)**

**Mr Mallikarjun Chityala, (“the First Respondent”) 4 Southlawn Court, Easter Park Drive, Edinburgh, EH4 6SJ**

**Mrs Sheetal Chityala, (“the Second Respondent”) Flat 1, 98 Orchard Brae Avenue, Comely Bank, Edinburgh, EH4 2GB**

**Tribunal Members:**

**Robert MacDonald (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory process had been carried out correctly and that it was reasonable to grant the Order sought.**

**Background**

1. The Applicant’s agent applied to the Tribunal under Rule 33 on 20<sup>th</sup> December 2024 for an order for possession of the property based on the service of statutory notices to bring the short assured tenancy to an end. Attached to the application were: -
  - i. A copy Notice to Quit;
  - ii. A copy Notice in terms of section 33 of the Housing (Scotland) Act 1988;
  - iii. Proof of service of the Notices on the Respondents;

- iv. A copy Short Assured Tenancy Agreement between the parties;
- v. A copy form AT5;
- vi. A copy Notice in terms of s11 of the Homelessness etc (Scotland) Act 2003;
- vii. Evidence that the said notice had been intimated to Edinburgh District Council.

## **Case Management Discussion**

- 2. The application was accepted by the Tribunal on the 7<sup>th</sup> of April 2025, and a case management discussion (the “CMD”) took place on the 29<sup>th</sup> of August 2025. At the CMD there was no appearance by the First Respondent. The Second Respondent was not present but Mr Fairgrieve, Beveridge & Kellas Solicitors appeared on her behalf and explained to the Tribunal that he had been appointed as a curator ad litem to the Second Respondent in divorce proceedings at Edinburgh Sheriff Court. He explained that she resided in the property with her 2 children. There were issues surrounding the Second Respondent’s capacity. The application was opposed by Mr Fairgrieve on behalf of the Second Respondent, and the Tribunal continued the application to a hearing. A Direction was subsequently issued by the Tribunal on the 16<sup>th</sup> of March 2026 directing the Applicant and the Second Respondent to lodge further submissions in advance of the hearing.
- 3. The Applicant lodged an updated submission with the Tribunal dated 10<sup>th</sup> May 2026 as directed. The Second Respondent did not lodge a submission with the Tribunal.

## **Hearing**

- 4. The application called for a hearing by videoconference on the 15<sup>th</sup> of July 2026. The Applicant was present and represented by Mr Griffith from Rettie-Edinburgh. The First Respondent was present and represented his own interests. The Second Respondent was not present but was again represented by Mr Fairgrieve.
- 5. The Applicant confirmed that the action was insisted on. Her representative advised the Tribunal that there were now 3 months of arrears of rent, with the next rental payment due in August.
- 6. The First Respondent advised the Tribunal that he did not oppose the order sought by the Applicant. He no longer resided in the property.
- 7. The Tribunal sought confirmation from Mr Fairgrieve that he was instructed to act on behalf of the Second Respondent. His position was that his appointment by the court in relation to the divorce proceedings meant that it was appropriate for him to appear on behalf of the Second Respondent at this hearing. He reminded the Tribunal that he had been allowed to represent the Second Respondent’s interests at the CMD. He advised the Tribunal that she had not engaged with him in any meaningful manner in recent months. Her mental

health problems were undiagnosed as she had not co-operated with his attempts to have her medically examined. He had sent her regular emails to try and get her to engage with him. She was aware that there was a hearing of the Tribunal today. He understood her position was that she did not want to have to leave the property. He confirmed that he took no issue with the procedural history of Notices being served on the Respondents. He did not seek to suggest that the statutory procedures had not been correctly followed. He took no issue with the submission lodged by the Applicant which sets out clearly the reasons why she sought the order from the Tribunal. He accepted that the Second Respondent had not engaged with the Tribunal. There was no application made on behalf of the Second Respondent for the hearing to be continued. He was able to advise the Tribunal that the parties' 2 children stayed 3 days every week with the Second Respondent and 4 days every week with the First Respondent. He acknowledged that there were 3 months of arrears of rent and his understanding was that the Second Respondent was unable to pay the arrears. In response to a question from the Tribunal, Mr Fairgrieve conceded that it may be in the Second Respondent's best interests for the order to be granted, as this would enable the appropriate agencies to assess her needs and provide assistance as appropriate.

8. The First Respondent confirmed to the Tribunal that the Respondents had 2 children together aged 15 and 10 and that they divided their time between the First and Second Respondents. If an order was granted by the Tribunal they had accommodation at his house to stay in and would not be homeless.
9. The Tribunal adjourned to consider whether the Tribunal should continue to hear the application in the absence of the Second Respondent. The Tribunal concluded that given the Second Respondent's failure to engage with the Tribunal that in her absence there was no compelling reason not to deal with the application at the hearing. The Tribunal had to balance the respective interests of the parties and noted that it was approaching 2 years since the relevant notices had been served on the Respondents. The Tribunal considered that even if Mr Fairgrieve had not been present to represent the Second Respondent's interests it would have been appropriate for the Tribunal in all the circumstances to continue with the hearing given the failure by the Second Respondent to engage with the tribunal.
10. The Tribunal resumed after a brief adjournment. The Tribunal asked the Applicant to confirm that her position remained as set out in her submission previously lodged with the Tribunal, and she confirmed that it did.
11. The Tribunal concluded that the facts in this case were sufficiently clear and it was not necessary to hear evidence from witnesses.

### **Findings in fact and law**

12. The Applicant is the landlord, and the Respondents are the tenants in terms of a Short Assured Tenancy agreement entered into between the parties on 18<sup>th</sup> November 2016.

13. The correct statutory procedures have been followed to terminate the Short Assured Tenancy Agreement.
14. The Applicant wished to recover possession of the property with a view to selling it to raise capital.
15. The Applicant wanted to raise capital to enable her to purchase a flat in Glasgow for her son who has accepted a place at the University of Glasgow commencing in August 2026.
16. The Respondents have been aware of the Applicant's desire to recover possession of the property since September 2024.
17. The Respondents have separated.
18. The First Respondent no longer lives in the property.
19. The Second Respondent continues to reside in the property.
20. The Respondents have 2 children who reside in the property with the Second Respondent 3 days a week.
21. The children reside with the First Respondent 4 days a week.
22. The First Respondent can provide suitable accommodation for the children.
23. There are 3 months' arrears of rent.
24. The curator has explained in writing to the Second Respondent what could happen if the Tribunal granted an order for her eviction.
25. The Second Respondent has failed to engage with either the Tribunal or her curator.
26. It is reasonable for the order sought to be granted.

### **Reasons for decision**

27. The Tribunal was satisfied having considered all the documentary evidence in the submissions from the Applicant and from what it heard from the First Respondent and the Second Respondent's representative that it had sufficient information before it to make the relevant findings in fact and to enable it to reach a decision on the application.
28. The Respondents did not challenge the factual basis set out in the application and the First Respondent conceded that the order should be granted.
29. The Second Respondent's representative conceded that the granting of such an order might be in her best interests.

30. The Tribunal was satisfied that the Applicant had completed the statutory requirements to terminate the Short Assured Tenancy agreement.
31. The Tribunal was satisfied that the Applicant wished to sell the property with a view to raising capital.
32. The Tribunal was satisfied that the two children had accommodation available for them with the First Respondent.
33. The Tribunal accepted that given her apparent mental health problems she might require additional time to deal with the issues that would arise as a result of an order for eviction. The Tribunal considered that it would be fair and just that the eviction order be suspended for the period of 6 weeks until 26<sup>th</sup> August 2026.
34. Having regard to the factors relevant to reasonableness, the Tribunal concluded that it was reasonable for an order for eviction to be granted.
35. This decision is unanimous.

### **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.**

Robert MacDonald

**15.7.26**

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**Legal Member/Chair**

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**Date**