



**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/21/0908**

**Re: Property at 23 Plymouth Avenue, Gourock, PA19 1HT (“the Property”)**

**Parties:**

**Mrs Jennifer A Dolan, Flat 0/2, 45 Crunes Way, Greenock, PA15 2WN (“the Applicant”)**

**Mr James Charles McSorley, Ms Elaine McSorley, 23 Plymouth Avenue,  
Gourock, PA19 1HT (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession be granted but the date of execution of the order be postponed until 30<sup>th</sup> August 2021**

**Background**

- This was a case management discussion to consider the application made by the Applicant dated 14<sup>th</sup> April 2021 for an order for repossession of the Property in terms of Rule 66 of the Tribunal Rules. The CMD took place by teleconference as a result of the current requirement for social distancing.
- The Applicant is the Landlord in a Short Assured Tenancy with the Respondent who is the tenant. The Applicant has title and interest by virtue of owning the property.
- The Applicant was not present on the teleconference herself but her representative Ms Hatrick from the Inverclyde Letting Agency was in attendance. The second named Respondent was also in attendance with her representative Mr Sean McPhee from Legal Services Agency and she advised her son, who is disabled and is the other tenant, would not be attending the teleconference. The Tribunal noted that intimation of the

proceedings had been served on Mr James McSorley by sheriff officer dated 21<sup>st</sup> May 2021.

- The Applicant had lodged and the Tribunal had sight and considered the following documents:-
  - Application for repossession dated 14<sup>th</sup> April 2021
  - Copy Tenancy Agreement for the Property dated 30<sup>th</sup> November 2017
  - Copy AT5 Notice dated November 2017
  - Notice to Quit dated 18<sup>th</sup> August 2020 to leave by 30<sup>th</sup> October 2020
  - S33 Notice dated 18<sup>th</sup> August 2020 requiring vacant possession by 28<sup>th</sup> February 2021.
  - Execution of service by sheriff officer dated 18<sup>th</sup> August 2020
  - S11 notice to Inverclyde Council dated 14<sup>th</sup> April 2021.

- **The Case Management Discussion**

1. The Legal Member explained the purpose of the CMD and advised that the Tribunal could do anything at a case management discussion which it may do at a hearing.
2. Ms Hatrick explained that the landlord and applicant was seeking an order for possession as she wished to end the tenancy. It was a short assured tenancy and she advised the notice to quit had been served for 30<sup>th</sup> October 2020 but in view of the changes to the legislation because of coronavirus the S33 notice gave 6 months' notice to require the tenant to leave by 28<sup>th</sup> February. She confirmed that Ms McSorley had asked for an extension of time to leave because she had been offered a new property for herself and her son but they still had not left and the Applicant felt she needed to proceed with the application to protect her interests.
3. Mr McPhee advised that his instructions were that Ms McSorley was consenting to the order sought but seeking a delay in the date the order could be executed to allow the development of her new house which had been delayed due to Covid issues. Ms McSorley explained she is the carer of her disabled son who is the joint tenant and that they have been offered a new build social house to rent but although the house was complete the road into the estate was not yet ready. She was hoping it would be ready very soon and agreed that as soon as it was ready she would only need a week to move and did not want to be liable for longer than that as she could not afford two rents.
4. The Tribunal adjourned for 20 minutes to allow Ms Hatrick to speak to the Applicant and on resumption of the CMD Ms Hatrick advised that Ms Dolan agreed a delay in the execution date of the order would be acceptable in the circumstances although she would hope the Respondents would get into their new house earlier if possible.

### **Findings in Fact**

5. The Applicant and Respondent have entered into a short assured tenancy of the Property from 30<sup>th</sup> November 2017 to 30<sup>th</sup> November 2019 and thereafter on a monthly basis.
6. The Applicant is the Landlord and served a Form AT5 on the Respondent who is the Tenant prior to the creation of the tenancy.

7. The Tenancy is a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988.
8. The rent is £575 per calendar month.
9. The Applicant has served by sheriff officer on 18<sup>th</sup> August 2020, a Notice to quit and S33 notice on the Respondent terminating the contractual tenancy as of 30<sup>th</sup> October 2020 and giving 6 months' notice that they required possession of the Property by 28<sup>th</sup> February 2021.
10. The Respondent who is the tenant has not vacated the property.
11. The Respondent has accepted the offer of a new build house but it is not yet ready for them to move into but should be ready in the next few weeks.
12. A s11 notice in terms of the Homelessness etc. (Scotland) Act 2003 was served on the Local Authority on 14<sup>th</sup> April 2021

### **Reasons for Decision**

13. The Applicant has entered into a Short Assured Tenancy with the Respondent.
14. S33 of the Act says "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 for Scotland may make an order for possession of the house if it is satisfied-
  - a) That the short assured tenancy has reached its end
  - b) That tacit relocation is not operating
  - c) That no further contractual tenancy is for the time being in existence and
  - 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.

The period of notice required to be given under S33 (1) (d) above is six months, in accordance with the legislation as amended.

15. The Short Assured tenancy has reached its end, tacit relocation is not operating and there is no further contractual tenancy in existence, so the Applicant having given adequate notice in terms of S33 above, can and has applied to repossess the Property. However since April 2020 and Section 2 and Schedule 1 of the Coronavirus (Scotland) Act 2020, there has been a change to the law on repossessions and before an order for possession is granted the Tribunal has to be satisfied that it is reasonable to grant the order.
16. The Tribunal considered carefully the submissions from both parties and the written evidence it had before it.
17. The Applicant wishes to have her house back and the Respondent is keen to move and has secured a new social rented house which is nearly complete. There has been a delay in the finishing of the roads leading to the new property which has delayed the entry date. The Applicant has extended the time she originally was giving the tenant to vacate, to allow the construction works to be completed but was concerned that the tenants have not yet moved so raised this action. The Respondent's representative explained that she lives in the Property with her son who is disabled and advised that she was consenting to the order for possession provided the date of execution could be postponed to the end of August, namely the 30<sup>th</sup> August. The

Applicant's representative took instructions on this proposal and confirmed that the Applicant is agreeable to this.

18. The Tribunal is able to make any order at a case management discussion as it can after a Hearing and can order a delay in the execution of any order in terms of rule 16A (d) of the Tribunal's rules. The Second named respondent is consenting to the application provided the date of execution is postponed to allow her and her son, the first named respondent, time for their new house and access to it to be completed. She is a full time carer for her son and he is not able to attend the Tribunal, but will be moving to the new Property with his mother. The Tribunal is satisfied the notices are in order and that it is reasonable to grant the order for eviction with a postponed date of execution in these circumstances and that balancing the interests of both parties the Tribunal found it was reasonable to grant an order for repossession at this CMD and that a hearing is not required.

- **Decision**

**An order for possession is granted with a postponed date of execution to 30<sup>th</sup> August 2021.**

### **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.**

J. Todd

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**Legal Member/Chair** **21<sup>st</sup> June 2021** **Date**