



**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/18/0376

**Re: Property at 66 Drumpellier Avenue, Baillieston, Glasgow, G69 7DW (“the
Property”)**

Parties:

**Ms Claire Pagani, 9 Bredisholm Drive, Baillieston, Glasgow, G69 7HZ (“the
Applicant”)**

**Ms Mari McNab, 66 Drumpellier Avenue, Baillieston, Glasgow, G69 7DW (“the
Respondent”)**

Tribunal Members:

Eleanor Mannion (Legal Member)

Decision (in absence of the Respondent)

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

- **Background**

An application was lodged by the Applicant dated 8th February 2018. This application sought possession of the property at 66 Drumpellier Avenue, Baillieston, Glasgow, G69 7DW. The tenant in that property was the above Respondent, Marie McNab. The Applicant sought possession based on Ground 8 of Schedule 5 of the Housing (Scotland) Act 1988. Along with her application, the Applicant lodged a copy of the tenancy agreement, a AT5 Notice, a Notice to Quit, an AT6 Notice, a Section 33 Notice and a Section 11 form. The application was sifted by the tribunal and on the 4th April 2018, considered complete by the In-House Legal Member.

- **Case Management Discussion**

A Case Management Discussion was convened for 10am on Tuesday 12th June 2018 at the Tribunal Centre, 20 York St, Glasgow, G2 8GT. Papers were

served on the Respondent by Sheriff Officers on the 10th May 2018. The covering letter from the First Tier Tribunal for Scotland outlined that written representations must be provided by the Respondent to the Tribunal office by the 31st May 2018. The letter also set out in bold that a decision may be made at the scheduled Case Management Discussion including the making or refusing of an eviction or payment order.

The Respondent did not in fact provide representations by the 31st May 2018 or the date of the hearing itself, namely the 12th June 2018. Nor did she attend at the hearing. The hearing was scheduled to being at 10.00am. It was delayed for a further 5 minutes to allow checks to be made to establish if the Respondent intended to attend.

The Applicant was representing herself. She advised that the Respondent is still living in the property and that he has regular contact with her by phone. She confirmed that she advised the Respondent that she was in rent arrears since September 2017, that some payments were made by the Respondent here and there but there continued to be arrears. The monthly rent is £580 per calendar month, payable on the 1st of each month. She stated that no rent was paid by the Respondent on the 1st October, 1st November, 1st December 2017 or on the 1st January and 1st February 2018. It was normally paid into her account by way of bank transfer.

The Respondent has been in receipt of housing benefit but the Applicant believed in September 2017 that she was not paying this to the Applicant. The Applicant contacted Glasgow City Council who are the Local Authority for the above address and asked that all housing benefit payments are made directly to the Applicant. She advised that it was not until Jan 2017 when she received her first payment from Glasgow City Council. The Applicant received the following payments from Glasgow City Council as housing benefit payments for the above address:

19 th January 2018	£663.20
16 th February 2018	£343.14
16 th March 2018	£268.84
4 th April 2018	£251.03
13 th April 2018	£407.10
11 th May 2018	£410.28

The Respondent also made the following payments to the Applicant:

2 nd March 2018	£120
16 th March 2018	£20
4 th May 2018	£60
10 th May 2018	£60

The Applicant showed a number of text messages between herself and the Respondent. One such message dated 18th November 2018 stated "u [sic] can sing for the windows and doors. I was actually gone [sic] to pay u [sic] this month lol, just spite ure [sic] self, have a nice day, make sure u [sic] give me notice so I can find somewhere else to stay". Further messages indicated that the Respondent would not be paying her rent. More recent text messages

confirmed that she wouldn't be paying her rent as she was saving all her money to obtain a new flat and new furniture.

- **Findings in Fact**

The Tenancy began on the 1st October 2016 for a period to the 1st April 2017. The Tenancy Agreement provided that if the Tenancy was not brought to an end by either party on the 1st April 2017, it would continue on a month to month basis thereafter.

An AT5 Notice was provided to the Respondent prior to the Tenancy beginning.

The rent payable under the Tenancy Agreement is £580 per calendar month, to be paid on the 1st of each month.

Rent arrears began to build up from 1st September 2017. A payment of £500 was received on the 30th September 2017. No rental payment was received on the 1st October, 1st November, 1st December 2017 or 1st January or 1st February 2018. Glasgow City Council made a housing benefit payment directly to the Applicant on the 19th January 2018 of £663.20

The Applicant served a Notice to Quit dated 20th November 2017 on the Respondent. A Section 33 Notice also dated the 20th November 2017 was served on the Respondent. Service of both Notices was by way of recorded delivery.

An AT6 Notice dated 6th February 2018 was served on the Respondent, again by recorded delivery.

The Applicant applied to the Housing and Property Chamber of the First Tier Tribunal for Scotland on the 8th February 2018, seeking possession under Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (the Chamber Rules).

- Section 33 of the Housing Scotland Act 1988 states the following:

(1) 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 shall make an order for possession of the house if the Tribunal is satisfied—

(a) that the short assured tenancy has reached its finish;

(b) that tacit relocation is not operating; 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.

This Section operates so as to require the First-tier Tribunal to make an order for Possession provided that the Section is complied with.

- **Decision**

After considering the papers before me and the submissions made by the Applicant, I am satisfied that the provisions of Section 33 of the Housing (Scotland) Act 1988 are fulfilled. Therefore the Tribunal has no discretion and must make an order for possession. The application for possession made under Rule 66 of the Chamber Rules is therefore granted.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

E Mannion

Legal Member/Chair

12/6/15

Date