



**Decision 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/23/0139**

**Re: Property at 162 Kingsacre Road, Glasgow, G44 4LY (“the Property”)**

**Parties:**

**Mrs Elaine Hesketh, 6 Kenmure Road, Glasgow, G46 6TU (“the Applicant”)**

**Mr Bryan Thomson, Ms Lyndsey McKinnon, 162 Kingsacre Road, Glasgow, G44 4LY; 162 Kingsacre Road, Glasgow, G44 4LY (“the Respondents”)**

**Tribunal Members:**

**Graham Harding (Legal Member) and David MacIver (Ordinary Member)**

**Decision (in absence of the Respondents)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the applicant was entitled to an order for possession of the property.**

**Background**

1. By application dated 13 January 2023 the Applicant’s representative Cowan & Co, Solicitors, Glasgow applied to the Tribunal for an order for possession of the property in terms of Section 33 of the Housing (Scotland) Act 1988. The Applicant’s representatives submitted a copy of the tenancy agreement, Form AT5, Notices to Quit, Section 33 Notices and Section 11 Notice together with proof of service in support of the application.
2. By Notice of Acceptance dated 15 March 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. Intimation of the CMD was served on the Respondents by Sheriff Officers on 24 March 2023.

4. By correspondence dated 29 March 2023 the Second Respondent's representatives, Castlemilk Law & Money Advice Centre advised the Tribunal administration that the Second Respondent was not intending to submit a defence to the application and had been accepted as homeless by Glasgow City Council.

### **The Case Management Discussion**

5. A CMD was held by teleconference on 2 May 2023. The Applicant attended in person and was represented by her husband, Mr Martin Hesketh. The Respondents did not attend nor were they represented. The Tribunal being satisfied that proper intimation of the CMD had been given to them determined to proceed in their absence.
6. The Tribunal noted that the parties had entered into a Short Assured Tenancy agreement that had commenced on 9 October 2012 and endured until 8 October 2013 and continued from year to year thereafter. The Tribunal also noted that the Applicant's representatives had served Notices to Quit and Section 33 Notices on the Respondents by recorded delivery post on 4 February 2022 giving them six months' notice to remove from the property. Mr Hesketh advised the Tribunal that the Respondents continued to remain in the property.
7. The Tribunal also noted that the Applicant's representatives had intimated a Section 11 Notice to Glasgow City Council by email on 23 January 2023.
8. The Tribunal pointed out that in terms of the Coronavirus Recovery and Reform (Scotland) Act 2022 it required to be satisfied that it was reasonable to grant an order for possession. Mr Hesketh explained that he and his wife had a significant portfolio of buy-to-let properties that were subject to interest only mortgages. He went on to say that they wished to retire and dispose of their portfolio over time but needed to take back this property to raise capital to reduce their indebtedness. He said that the capital was needed not for frivolous reasons like buying a car or going on holiday but to reduce debt. He said that interest rates had gone through the roof on some of their properties that had been re-mortgaged and in one case the monthly cost had risen from £340.00 to £860.00 and now exceeded the monthly rent of £700.00 before taking account of other outgoings like insurance. It was therefore necessary to reduce their debt which ran into several hundred thousand pounds.
9. Mr Hesketh confirmed that the Respondents were good tenants and that there were no rent arrears with their rent being paid by Housing Benefit. He also advised the Tribunal that he thought the Respondents had one child living with them at the property aged about two years. He submitted that in all the circumstances it was reasonable to grant the order sought.

## **Findings in Fact**

10. The parties entered into a Short Assured Tenancy that commenced on 9 October 2012 and endured until 8 October 2013 and continued from year to year thereafter by tacit relocation.
11. The Respondents were served with Notices to Quit and Section 33 Notices dated 4 February 2022 by recorded delivery post giving them six months' notice to remove from the property.
12. A Section 11 Notice was sent to Glasgow City Council by email on 23 January 2023.
13. The Second Respondent, Ms McKinnon through her representatives has confirmed she does not oppose the application.
14. The Second Respondent has been accepted as homeless by Glasgow City Council.
15. The Applicant intends to sell the property and use the equity to reduce her and her husband's indebtedness in their combined buy-to-let portfolio of properties.

## **Reasons for Decision**

16. The Tribunal was satisfied from the written representations and documents produced together with the oral submissions that the parties had entered into a Short Assured Tenancy and that the Respondents had been given proper notice of its termination by service of Notices to Quit and Section 33 Notices. The Tribunal was also satisfied that proper intimation of the proceedings had been sent to Glasgow City Council by way of a Section 11 Notice.
17. Were it not for the provisions of the Coronavirus (Scotland) Act 2020 and the Coronavirus Recovery and Reform (Scotland) Act 2022 the Tribunal would have been obliged to have granted the order sought. However, the Tribunal has to consider whether it would be reasonable to grant the order. In reaching its decision in this regard the Tribunal has taken account of the correspondence submitted on behalf of the Second Respondent who has decided not to oppose the application. It has also taken account of the fact that despite being given an opportunity to submit written representations and attend the CMD the First Respondent has done neither. The Tribunal has also carefully considered the oral submissions made on behalf of the Applicant by Mr Hesketh. It has noted that the Applicant's and her husband's financial affairs are closely linked and that they treat their buy-to-let portfolio as a combined venture. The Tribunal has taken account of the difficulties facing the couple with the increased costs of interest only mortgages and the need to reduce their indebtedness as part of their longer-term plan to retire from the rental market completely. Taking everything into account and in particular the lack of opposition from the Respondents The Tribunal is satisfied that it is reasonable to grant the order which will be subject to a delay in coming into

effect due to the current restrictions imposed by the Cost of Living (Tenant Protection) (Scotland) Act 2022.

### **Decision**

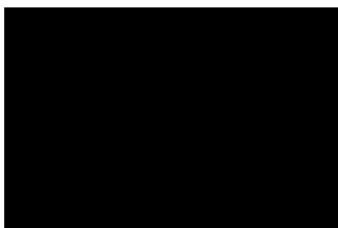
18. The Tribunal being satisfied it had sufficient information before it to make a decision without the need for a hearing finds the Applicant entitled to an order for possession of the property.

### **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.**



**Legal Member/Chair**

**Date: 2 May 2023**