



**Decision on Application to Review Decision of the First-tier Tribunal for Scotland Housing and Property Chamber under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”)**

**Chamber Ref: FTS/HPC/EV/21/0463**

**Re: Property at 94 St Mary's Crescent, Glasgow, G78 2TN (“the Property”)**

**Parties:**

**Mr Robert Walker, Mrs Elizabeth Walker, 9 Nether Kirkton Avenue, Glasgow, G78 3NU; 9 Nether Kirkton Avenue, Neilston, G78 3NU (“the Applicants”)**

**Mr Christopher Phillips, Mrs Evelyn Phillips, 94 St Mary's Crescent, Glasgow, G78 2TN (“the Respondents”)**

**Tribunal Members:**

**Steven Quither (Legal Member) and Melanie Booth (Ordinary Member)**

**Decision**

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

**The Application for Review is to be GRANTED, the Tribunal’s original decision made at Case Management Discussion on 23 April 2021 is to be SET ASIDE and NO FURTHER ORDER is to be made.**

**1. BACKGROUND**

By a properly constituted Short Assured Tenancy Agreement dated 24 March 2015, the parties agreed that as from 25 March 2015, the Respondents would rent the Property from the Applicants at a rent of £750 per calendar month and for an initial period of one year, continuing thereafter on a month to month basis, which it duly did until these proceedings.

Due to a change in their circumstances, occasioned by the coronavirus pandemic, the Applicants sought to bring the tenancy to an end and served appropriate Notice to Quit and s33 Notice on the Respondents, their notice periods having been adjusted appropriately to take account of the different requirements regarding same, again occasioned by said pandemic. In addition, appropriate intimation under s11 of

the Homelessness etc. (Scotland) Act was made to East Renfrewshire Council, as relevant local authority.

Accordingly, the Tribunal was satisfied that all necessary formalities to bring the tenancy to an end had been complied with.

## **2. CASE MANAGEMENT DISCUSSION**

This took place on 23 April 2021 before the Tribunal comprising of a Legal and an Ordinary Member, as stated.

The Applicants were represented by their Agent, Ms. Pavo and the Second Respondent represented both herself and the First Respondent. The Tribunal was satisfied both parties in attendance were authorised to represent the parties to the application.

Ms Pavo clarified that the Applicants simply wished to move back into their home and that they felt there had been something of a breakdown in trust between the parties, demonstrated by the fact that some 8 months or so after service of the Notice to Quit and s33 Notice, the Respondents still occupied the Property. The Applicants were living with their daughter and payment of rent had frequently been late—the rent due for this month was outstanding-- although she did concede that at least some of the late payments had been by agreement and, in any event, late payment of rent did not form any basis for this application. She felt an order would afford reassurance to the Applicants, who were somewhat sceptical about the proposed vacation of the Property by the Respondents on 27 April i.e. in 4 days time. In these circumstances, she asked for the order to be granted, notwithstanding the pending vacation of the Property by the Respondents.

Mrs. Phillips advised that the Respondents had tried from before issue of the Notices to find alternative accommodation but had simply been unable to do so, for a variety of reasons. However, they now had keys to a local authority property, which they had spent since about 12 April making ready for moving in. They now intended to do so on 27 April and she provided the address to the Tribunal, which she did not wish disclosed to the Applicants. She advised she had no difficulty if the Tribunal chose to make the order now sought by the Applicants, given that she and her family were in the process of vacating the Property anyway and arrangements could be made for returning keys etc. when that duly took place.

She also confirmed that the deposit could now be used for the outstanding rent payment for April, which Ms. Pavo advised she would facilitate, while properly reserving the Applicants' position regarding any remedial matters for which a deposit might ordinarily be used after conclusion of a tenancy.

## **3. FINDINGS IN FACT**

Based on the documentation produced prior to and representations made at the CMD, the Tribunal was satisfied that the parties had entered into a Short Assured Tenancy on the terms stated in preceding Paragraph 1, which continued until these proceedings. It was also satisfied that appropriate procedural steps had been taken to bring the tenancy to an end.

## **4. REASONS FOR ORIGINAL DECISION**

Since the Tribunal was satisfied as to the nature of the Tenancy as indicated in the preceding paragraph, it then required to consider if it was reasonable to make the order sought, as required for such applications in terms of the (temporary) provisions of s33. It was so satisfied, on the basis that the order would afford clarity and

certainty to the parties and, in any event, was not opposed by the Respondents. Accordingly, it granted the order for possession sought by the Applicants.

## **5. REVIEW**

By e-mail dated 28 April, the Respondents sought to review said decision, on the basis that the clarity and certainty which the decision sought to afford to parties had now been afforded by subsequent events, namely their vacating the Property on 27 April, as they had indicated on 23 April. This fact was confirmed indirectly by e-mail from the Applicants dated 30 April, in which they refer to "receipt of the keys". Accordingly, it appears clear and certain that the Respondents have indeed now vacated the Property as at 27 April. From consideration of said Applicants' e-mail and other e-mails now sent to the Tribunal from both sides, there appear to be some other issues arising from the end of the tenancy. However, none of these are relevant to this application or, indeed, the Review, given that they appear to be complaints by the Applicants about the condition in which they state they found the Property once they resumed possession of it and, accordingly, are not matters before the Tribunal in respect of this application and subsequent review.

The Applicants had intimated opposition to the Review by a telephone call of 30 April. The Tribunal sought clarification and finalisation of the views of parties by 14 May, which date has now passed. The Tribunal has carefully considered all communications received up to and including 14 May in arriving at its decision on the review.

Neither party has sought a hearing.

On the basis that the clarity and certainty its original decision sought to afford to parties has now been provided by subsequent events, the Tribunal is now content to GRANT the Application for Review, SET ASIDE its original decision made on 23 April 2021 and make NO FURTHER ORDER in respect of this application.

## **6. DECISION**

To GRANT the Application for Review, SET ASIDE the Tribunal's original decision of 23 April 2021 and make NO FURTHER ORDER in respect of this application.

### **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.

**S.Q.**

**SR QUITHER**

---

**20 MAY 2021**

---

**Legal Member/Chair**

**Date**

**M BOOTH**

**20 MAY 2021**

---

**Ordinary Member**

---

**Date**