

**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 Act")**

**Chamber Ref: FTS/HPC/EV/18/0401**

**Re: Property at Flat 0/2, 129 Kilmarnock Road, Glasgow, G41 3YT ("the Property")**

**Parties:**

**Morgan Stanley Bank International Limited, 25 Cabot Square, Canary Wharf, London, E14 4QA ("the Applicant") per its Agents, Mr. D. Watson and Ms. D. Watson of Messrs Wilson McKendrick Solicitors Limited, Queens House, 29 St Vincents Place, Glasgow, G1 2DT**

**Ms Ana Lingurariu, Flat 0/2, 129 Kilmarnock Road, Glasgow, G21 2DT ("the Respondent") per her Agent, Ms. Irzum of Govan Law Centre, Orkney Street Enterprise Centre (Units 4 & 6), 18-20 Orkney Street, Glasgow, G51 2BZ.**

**Tribunal Member:**

**Karen Moore (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an Order for Possession is granted under Section 33 of the Housing (Scotland) 1988**

**Background**

1. This is an application on behalf of the Applicant as heritable creditor in possession for an order for possession in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules").
2. The tenancy was a short assured tenancy of the Property by Gordon McAusland the then registered proprietor of the Property as landlord and the Respondent as tenant commencing on 9 July 2017 and terminating on 9 January 2018. The Applicant is the heritable creditor in possession by

virtue of Decree under the Conveyancing and Feudal Reform (Scotland) Act 1970 in its favour.

3. An application comprising:-

- i) a completed application form signed on behalf of the Applicant and dated 12 February 2018;
- ii) copy tenancy agreement between the said Gordon McAusland and the Respondent referencing the existence of the heritable security in favour of the Applicant;
- iii) copy extract Decree under the Conveyancing and Feudal Reform (Scotland) Act 1970 in favour of the Applicant
- iv) copy Notice to Remove with evidence of service on the Respondent;
- v) copy notice in terms of section 19 of the Act, commonly known as "AT6", relying on Ground 2 of the Act with evidence of service on the Respondent and
- vi) copy notice in terms of Section 19A of the Act as prescribed by Section 11(3) of the Homelessness Etc. (Scotland) Act section 11 with evidence of notification to Glasgow City Council as local authority for the area relative to the Property ("the Application") was lodged with the Tribunal.

4. The Application and notice of a case management discussion of the First-tier Tribunal for Scotland Housing and Property Chamber to be held at 10.00 am on 11 April 2018 at the Glasgow Tribunals Centre, 20 York Street, Glasgow was served personally on the Respondent by Walker Love, Sheriff Officers, on 19 March 2018 and a Certificate of Service was lodged with the Tribunal.

### **Case Management Discussion**

5. A case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber was held before me at 10.00 am on 11 April 2018 at the Glasgow Tribunals Centre, 20 York Street, Glasgow. Neither the Applicant nor the Respondent was present. The Applicant was represented by Mr. D. Watson and Ms. D. Watson of Messrs Wilson McKendrick Solicitors Limited, Queens House, 29 St Vincents Place, Glasgow, G1 2DT and the Respondent was represented by Ms. Irzum of Govan Law Centre, Orkney Street Enterprise Centre (Units 4 & 6), 18-20 Orkney Street, Glasgow, G51 2BZ.
6. Ms. Irzum addressed me and advised that she had submitted a written response on behalf of the Respondent to the Tribunal by email on 5 April 2018. However, a search having been made of the Tribunal records, no trace of this written response was found in the Tribunal records. Ms. Irzum offered to tender a copy of the written response to the Tribunal and the Applicant's agents. Having regard to the Rules, namely Rule 2 and Rule 22, I declined to allow submission of the written response and advised Ms

Izram that, the current proceedings being a CMD, she could address the points made in the written response as part of the discussion.

7. Mr. Watson addressed me to confirm that the Application conformed to the requirements of the Act and Rule 66 of the Rules and moved that an Order be granted.
8. Ms. Irzum then addressed me and advised that the Respondent did not object to an Order being granted but requested that the Order be suspended for two months to allow the Respondent to seek alternative accommodation and to apply for homelessness assistance from the local authority. In support of her submission, Ms. Irzum explained that the Respondent has eight children of whom five are aged under sixteen years, that the Respondent did not understand English and had not understood the correspondence sent to her on behalf of the Applicant and had only consulted Govan Law Centre in March of this year. Mr. Watson submitted that the Respondent's tenancy had ended on 9 January 2018 and that she had had ample notice and opportunity to arrange alternative accommodation.

### **Findings in Fact**

9. The Application lodged on behalf of the Applicant conformed in all respect to the Act and the Rules and was served on the Respondent with sufficient notice of the CMD of 11 April 2018.
10. The Respondent did not object to the granting of an Order nor was any submission made to infer any dispute or objection in that regard.
11. On the balance of probability and having no reason to doubt Ms Izram's submission in respect of the Respondent's personal circumstances, the Respondent has eight children who reside with her, has difficulties with the English language and now requires to arrange alternative accommodation.

### **Reasons for Decision**

12. My decision was based on the Application and the submissions made at the CMD and, in particular, to the fact that there was no objection to the Order being granted. I then had regard to the terms of Rule 17(4) of the Rules and took the view that this Rule allows me, at a CMD, to make an order for possession. Accordingly, I proceeded to make the decision to grant an Order against the Respondent for possession of the Property under Section 33 of the Act.
13. On the basis of Ms Izram's submission that the Order be suspended for two months, I then considered on which date the Order should take effect. I gave consideration to the submissions made by both parties, and,

although I had sympathy with the Respondent's position, agreed with Mr Watson that the Respondent had had ample notice and opportunity to arrange alternative accommodation and that, in any event, the Tribunal procedures allowed for a minimum of 30 days between granting the Order and it taking effect. Accordingly, I refused to defer the date on which the Order will take effect to a date later than the statutory minimum.

### **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.**

Karen Moore

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**Legal Member/Chair**

**Date 11 April 2018**