



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 Housing (Scotland) Act 1988 (“the 1988 Act”)**

**Chamber Ref: FTS/HPC/EV/21/1424**

**Re: Property at 23G John Street, Helensburgh, G84 8XL (“the Property”)**

**Parties:**

**Mr Ka Yu Cheng, Flat 1/1, 5 Ashvale Crescent, Springburn, Glasgow, G21 1NB (“the Applicant”)**

**Mrs Elizabeth Moeletsi, Address Unknown (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member)**

**Mary Lyden (Ordinary Member)**

**Decision (In absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondent in favour of the Applicant.**

**Background**

1. The Applicant lodged an application for possession of the property in terms of Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”) on 14 June 2021. A tenancy agreement, AT5 notice, copy Notice to Quit, Section 33 Notice and Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 were lodged in support of the application. A copy of the application and supporting documents were served at the property by Sheriff Officer on 9 September 2021. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 7 October 2021 at 2pm and that they were required to participate. Both were provided with a telephone number and passcode. The CMD took place by telephone conference call on 7 October 2021. The Applicant was represented by Ms Walker. The Respondent did not

participate and was not represented. Ms Walker advised the Tribunal that the Respondent is understood to be residing in South Africa. Her social worker notified them that she had returned to South Africa in 2020. In January 2021, the social worker could not provide an update on whether she intends to return. The Respondent's daughter responded to an email and stated that the Respondent intended to return "after COVID". In the meantime, the Respondent had continued to pay part of her rent by standing order. The remainder of the rent charge was previously paid by Housing Benefit and stopped in 2020 because the Respondent was not residing at the property. The Tribunal noted that the application had been served at the property. The report from the Sheriff Officer stated that there was no answer at the door, the Officer was unable to establish if the property was occupied and there were no neighbours to verify current residence. The application was deposited through the letterbox.

2. In the circumstances, the Tribunal determined that the CMD should be continued to a later date. The Applicant was directed to obtain a trace report to establish if the Respondent is currently residing at the property or at another address. If the Applicant was unable to obtain a current address, an application for service by advertisement would be required. On 9 November 2021, the Tribunal asked the Applicant's representative for an update on the Respondent's address. In response the Applicant provided an address in South Africa, together with emails from the Respondent's daughter which confirmed her residence there. On 9 December 2021, parties were notified that a further CMD would take place on 18 January 2022, by telephone conference call. The letter and a copy of the application were sent to the Respondent by Royal Mail international "signed for". The Royal Mail website indicated that the letter was still in transit when it was checked on various occasions by the Tribunal caseworker. On 17 January 2022, it was noted that the website had been updated and that delivery had been attempted on 14 January 2022, but no one had been home. The letter had therefore not been delivered.
3. The CMD took place by telephone conference call on 18 January 2022 at 10am. The Applicant was represented by Ms Walker. The Respondent did not participate. Ms Walker advised the Tribunal that there had been no contact with the Respondent or her daughter since the email correspondence in November 2021 when the daughter confirmed the Respondents current address in South Africa. The property remained unoccupied. The Respondent had continued to pay the part of her rent charge which was not previously covered by Housing benefit (£106 per month) but the remainder has not been paid since the Housing Benefit payments stopped. There was no response to an email sent by Ms Walker which suggested that the Respondent could terminate the tenancy and that the letting agents could arrange to ship her belongings to her.
4. In the circumstances, the Tribunal determined that the CMD would require to be continued to a further CMD as the Respondent had not yet been served with a copy of the application. The Tribunal noted that the Applicant's representative would contact the Respondent's daughter by email and suggest that the Respondent contact the Tribunal and provide an email address for service of

the application.

5. On 24 January 2022, the Royal Mail website confirmed delivery of the application. The parties were notified that a further CMD would take place by telephone conference call on 13 April 2022 at 10am. The Respondent was notified by letter sent international "signed for". Prior to the CMD the Royal Mail website was checked which confirmed that delivery had been attempted on 17 March 2022 but had not been successful. There was no further update. On 7 March 2022 the Applicant' representative notified the Tribunal that she had received a further email from the Respondent's daughter which stated that the Respondent was now in residential care and did not have an email address. The daughter did not provide evidence that she had authority to deal with matters relating to the tenancy on her mother's behalf and did not contact the Tribunal.
6. The CMD took place on 13 April 2022 at 10am. The Applicant was again represented by Ms Walker. The Respondent did not participate. Ms Walker again advised the Tribunal that there had been no contact from the Respondent or any further correspondence from her daughter. Following discussion, the Tribunal noted that the Respondent may not have received notification of the CMD and that her current address is now unknown. In the circumstances, the Tribunal determined that the application should proceed to a further CMD, and that intimation should be made by advertisement on the Tribunal website.
7. The Parties were notified that a further CMD would take place on 23 June 2022 at 10am, by telephone conference call. The Respondent was notified by advertisement on the Tribunal website between 24 May and 23 June 2022. The CMD took place on this date. The Applicant was again represented by Ms Walker. The Respondent did not participate and was not represented.

### **Case Management discussion**

8. Ms Walker advised the Tribunal that there has been no contact from the Respondent and no further contact with her daughter. She has not attempted to contact the daughter again because she had asked for evidence that the daughter had authority to deal with matters on behalf of the Respondent, and this was not provided. She stated that to the best of her knowledge, the Respondent remains in South Africa. The property appears to be unoccupied, although she understands that some of the Respondents belongings are still there. The portion of the rent charge not previously covered by housing benefit of £106 per month is still being paid by standing order on the 1<sup>st</sup> of each month. As the housing benefit stopped in 2020, there are now arrears of rent of £7284.
9. Ms Walker said that the Applicant has been very anxious about the situation regarding the property. This is his only rental property. He has experienced financial problems because of the rent arrears and will probably put it on the market for sale when he has recovered possession. She was unable to confirm if there a mortgage over the property.

## **Findings in Fact**

10. The Applicant is the owner and landlord of the property.
11. The Respondent is the tenant of the property in terms of a short assured tenancy agreement.
12. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondent on 20 August 2020
13. The Respondent has not resided at the property since 2020.
14. There are arrears of rent of £7284

## **Reasons for Decision**

15. The application was submitted with a short assured tenancy agreement and AT5 Notice. The term of the tenancy 2 May 2008 to 2 November 2008 with a provision that it continues on a month to month basis thereafter. The AT5 Notice is signed and dated by the Respondent, on the same date as the tenancy agreement.
16. Section 32 of the 1988 Act states “(1) A short assured tenancy is an assured tenancy - (a) which is for a term of not less than 6 months; and (b) in respect of which a notice is served as mentioned in subsection (2) below. (2) The notice referred to in subsection (1)(b) above is on which – (a) is in such form as may be prescribed; (b) is served before the creation of the short assured tenancy; (c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under the tenancy; and (d) states that the assured tenancy to which it relates is to be a short assured tenancy.”
17. The Tribunal is satisfied that the tenancy agreement between the parties was for an initial term of 6 months and therefore meets the requirements of Section 32(1) of the 1988 Act. The Tribunal is also satisfied that AT5 Notice was given to the Respondent prior to the creation of the tenancy. In the circumstances, the Tribunal determines that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act.
18. From the documents submitted with the application, and the information provided at the CMD by the Applicant’s representative, the Tribunal is satisfied that the Applicant’s letting agent served the Notice to Quit and Section 33 Notice on the Respondent on 20 August 2020 by Sheriff officer. The Notices were served at the property, being the Respondent’s last known address. The Notice to Quit called upon the Respondent to vacate the property on 2 March 2021, being an ish date. It contains the information prescribed by the Assured tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988

and complies with the terms of Section 112 of the Rent (Scotland) Act 1984. The Tribunal is satisfied that the Notice to Quit is valid and that the tenancy contract has been terminated. The Tribunal also notes that the Applicant has provided a copy of the Section 11 Notice sent to the Local Authority and have therefore complied with Section 19A of the 1988 Act.

19. Section 33 of the 1988 Act, as amended by the Coronavirus (Scotland) Act 2020, states “(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 may 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; (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” Subsection 2 states “The period of notice to be given under subsection (1)(d) above shall be – (1) if the terms of the tenancy provide, in relation to such notice, for a period of more than six months, that period; (ii) in any other case, six months”. The Tribunal is satisfied that the tenancy has reached its finish and, as the Applicants have served a valid Notice to Quit, that tacit relocation is not operating. A valid notice in terms of section 33(d) has also been served on the Respondent, giving at least six months’ notice that the Applicant required possession of the property.
20. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession, in terms of Section 33(e) of the 1988 Act. As the Respondent did not participate in the CMDs, or send written representations, the information available to the Tribunal about her circumstances was limited. From the information provided by the Applicant, it appears that the property has effectively been abandoned. At some point in 2020, the Respondent returned to reside in South Africa. This information came from her Social Worker. There was subsequent communication between the agent and the Respondent’s daughter which indicated that the Respondent intended to return when the pandemic had passed. However, that position appears to have changed and although it is not clear how much reliance can be placed on the emails from the daughter to the agent, the Respondent may now be residing in residential care. In the meantime, substantial arrears of rent have accrued which have caused the Applicant anxiety and financial problems.
21. In the circumstances, the Tribunal is satisfied that it would be reasonable to grant the order for possession.

## **Decision**

22. The Tribunal determines that an order for possession of the property should be granted against the Respondent.

## **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 Bonnar**

**Josephine Bonnar, Legal Member**

**23 June 2022**