



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 of the Housing (Scotland) Act 1988**

**Chamber Ref: FTS/HPC/EV/22/2353**

**Re: Property at 2/1 27 Copland Quadrant, Glasgow, G51 2RU (“the Property”)**

**Parties:**

**Ms Lindsay Wilson, 1/2 19 Sutcliffe Road, Glasgow, G13 1BU (“the Applicant”)**

**Ms Vikki Marshall, Mr Stuart Todd, 2/1 27 Copland Quadrant, Glasgow, G51 2RU; 38 Dapdune Court, Woodbridge Road, Guildford, Surrey, GU1 4RU (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member) and Elizabeth Williams (Ordinary Member)**

**Decision (in absence of the First Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction should be granted.**

On 15<sup>th</sup> July 2022 the Applicant lodged an Application with the Tribunal under Rule 66 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondents from the property.

Lodged with the application were: -

1. Short Assured Tenancy Agreement dated 14<sup>th</sup> August 2015 and initially running from 14<sup>th</sup> August 2015 to 14<sup>th</sup> February 2016 and monthly thereafter, and with monthly rent of £550
2. AT5 Notice dated 14<sup>th</sup> August 2015
3. Notice to Quit dated 10<sup>th</sup> May 2022 for 14<sup>th</sup> July 2022
4. Section 33 Notice dated 10<sup>th</sup> May 2022 for 14<sup>th</sup> July 2022
5. Proof of Service of 3 and 4

6. Section 11 Notice
7. Rent Statement

The Application was served on the Respondents by Sheriff Officers on 30th January 2023.

On 1<sup>st</sup> February 2023 the Second Respondent sent an email to the Tribunal saying that he had been made aware that there were actions against him. He said that he had not lived in the property for the last four years, had been in a different tenancy agreement in Scotland and had then moved to England in 2021.

On 22<sup>nd</sup> February 2023 the Tribunal sent a full copy of the case papers to him.

On 27<sup>th</sup> February 2023 the Applicant sent an email to the Tribunal with an up to date rent statement and a copy of an email from the First respondent dated 17<sup>th</sup> December 2021 which implied that the second respondent still lived in the property.

### **Case Management Discussion**

The Case Management Discussion (“CMD”) took place by teleconference. The Applicant represented herself. There was no attendance by the First Respondent. The Second Respondent represented himself.

The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and also that it was reasonable for the Tribunal to grant the order.

The Applicant sought an order for eviction in terms of sections 19 and 33 of the Housing (Scotland) Act 1988. She said that she wished to sell the property. She said that she issued the correct notices to bring the tenancy to an end. After the notices were issued she was contacted by the First Respondent who said that the Second Respondent no longer lived there. She said that this was the first notification she had received that he had left.

The Second Respondent said that he moved out of the property in 2019 and hadn't lived in Scotland for some time. He confirmed that he did not tell the landlord or the landlord's agent that he had moved out. He said that the First Respondent had said that she had told the landlord. The Housing Benefit was all in her name. The Second Respondent then said that he had told Jan and his wife, who he said worked for the original letting agent, Contempo Properties. The Applicant confirmed that Contempo Properties had been subsumed in to Astute Property, who were now her letting agent.

The Second Respondent said he had no objection to the eviction order being granted as he no longer lived there.

The Tribunal were satisfied that the ground had been established and asked the Applicant to address the Tribunal on reasonableness.

The Applicant said that she wanted to sell the property due to financial reasons. This was the only property she owned and the only mortgage she had. She wanted to buy a property to live in herself and needed to be able to take a mortgage to do so. She said that the property was a three bedroom tenement flat. The rent was now around one year in arrears. She could not afford to absorb that. She did not know the First Respondent's circumstances.

The Second Respondent confirmed that the First Respondent lived in the property with her two children, aged 10 and 3, of whom he was the father. He said the First Respondent had never worked and was on benefits.

The Applicant said that the First Respondent had been in contact with the letting agent about the arrears, but there was no payment arrangement in place.

### **Findings in Fact**

1. The parties entered into a Short Assured Tenancy Agreement in respect of the property;
2. The tenancy commenced on 14<sup>th</sup> August 2015, with the initial term being from 14<sup>th</sup> August 2015 to 14<sup>th</sup> February 2016, and monthly thereafter;
3. Notice To Quit and Section 33 Notice were served timeously and correctly;
4. The Application was served on the Respondents by Sheriff Officer 30th January 2023;
5. The notices were served correctly and timeously;
6. The Second Respondent did not oppose the order being granted;
7. The current arrears are £6550;
8. No arrangement is in place for payment of those arrears.

### **Reasons For Decision**

The Tribunal were satisfied that the ground of eviction was established.

Section 44 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022 states:

#### ***Assured tenancies: discretionary eviction grounds***

*(1)The Housing (Scotland) Act 1988 is modified as follows.*

*(2)In section 18 (orders for possession)—*

*(a)subsections (3) and (3A) are repealed,*

*(b)in subsection (4), for “Part II” substitute “Part I or II”,*

*(c)in subsection (6)(a), the words “or Ground 8” are repealed,*

*(d)in subsection (8), for “subsections (3A) and (4A)” substitute “subsection (4A)”.*

*(3)In section 19 (notice of proceedings for possession), subsection (5) is repealed.*

*(4)In section 20 (extended discretion of First-tier Tribunal in possession claims)—*

*(a)in subsection (1), for “Subject to subsection (6) below, the” substitute “The”,*

*(b)subsection (6) is repealed.*

*(5)In section 33(1) (recovery of possession on termination of a short assured tenancy)—*

*(a)in the opening words, for “shall” substitute “may”,*

*(b)after paragraph (b), the word “and” is repealed,*

*(c)after paragraph (d) insert “, and*

*“(e)that it is reasonable to make an order for possession.”.*

*(6)In schedule 5 (grounds for possession of houses let on assured tenancies)—*

*(a)in Part I, Ground 8 is repealed,*

*(b)the heading of Part I becomes “Certain grounds on which First-tier Tribunal may order possession”,*

*(c)the heading of Part II becomes “Further grounds on which First-tier Tribunal may order possession”.*

The Tribunal now has to decide if it is reasonable to grant the eviction order.

The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Tribunal accepted that the arrears were equivalent to around a years’ rent, and that there was no arrangement in place to make payment. Those facts in themselves made it reasonable to grant the order.

## **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.**



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**Legal Member/Chair**

**06 March 2023**

**Date**