



**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**

**Chamber Ref: FTS/HPC/EV/22/2490**

**Re: Property at 61 Ardmay Crescent, Glasgow, G44 4PU (“the Property”)**

**Parties:**

**Mrs Sharon McMenamin, 55 St Helens Road, Solihull (“the Applicant”)**

**Mr Robert Chisholm, Miss Ruth Riddler, Mr Scott Dylan Talbert, 61 Ardmay  
Crescent, Glasgow, G44 4PU; 24 Logie Square, East Kilbride, G74 4BY; 24  
Logie Square, East Kilbride, G74 4BY (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Ahsan Khan (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined to make an eviction order.**

**Background**

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under section 33 of the Housing (Scotland) Act 1988. In support of the application the Applicants provided the following documentation:-
  - (i) Short Assured Tenancy Agreement together with Form AT5;
  - (ii) Notice to Quit dated 20<sup>th</sup> April 2022 together with proof of service;
  - (iii) Notice under section 33 of the Housing (Scotland) Act 1988 dated 20<sup>th</sup> April 2022 together with proof of service; and

- (iv) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Glasgow City Council together with proof of service.
  
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was assigned for the 11<sup>th</sup> May 2023. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondents by Sheriff Officers.

### **Case Management Discussion**

- 3 The Case Management Discussion took place by teleconference on 11<sup>th</sup> May 2023. The Applicant was represented by Mr Javid Haq of Martin and Co who was accompanied by his colleague Linda Niveson as an observer. The Respondents did not attend. The Tribunal noted they had been served with the application paperwork together with the date and time of the Case Management Discussion and instructions for joining the teleconference. The Tribunal therefore determined to proceed in their absence.
  
- 4 The Tribunal explained the purpose of the Case Management Discussion and the legal test and asked Mr Haq to address them on his application.
  
- 5 Mr Haq explained that a notice to quit and notice under section 33 of the Housing (Scotland) Act 1988 had been served upon the Respondents as the Applicant wished to get the property back. She had elderly parents who were pensioners and she was trying to help them out by allowing them to move into the property which was a ground floor flat. She was therefore taking action in order to accommodate her parents. Mr Haq explained that they had gone through the legal channels by serving notices. On the day of check out he had attended the property and discovered that Ms Riddler and Mr Talbert had moved out some time before. Mr Chisholm advised that he was not leaving. Ms Riddler and Mr Talbert had not advised the Applicant that they were vacating and had absconded from the property. Mr Chisholm had not advised the Applicant that this had transpired. Mr Haq explained that since then access had been limited and it was difficult to make contact with Mr Chisholm. He cited an example whereby there had been difficulties in gaining access to carry out the gas safety inspection due to Mr Chisholm having no money in his meter. Mr Haq had eventually purchased a pre-payment card and had arranged for the inspection to be undertaken in order to ensure the safety of both Mr Chisholm and the property itself. That was the last time Mr Haq had been in contact with Mr Chisholm, well over six months ago.
  
- 6 In response to questions from the Tribunal Mr Haq advised that Mr Chisholm was believed to be single and around 45 to 47 years of age. He was not aware of anyone else residing in the property. Ms Riddler and Mr Talbert were Mr Chisholm's niece and nephew. Mr Haq advised that Mr Chisholm had stated that he couldn't afford the tenancy on his own. Mr Haq didn't know Mr

Chisholm's employment situation but he believed that Mr Chisholm had lost his job and had applied for universal credit. Rent was now being paid via the housing element of universal credit directly to the Applicant. Mr Haq confirmed that there were rent arrears but these had come down considerably due to an arrangement that had been entered into with Ms Riddler and Mr Talbert. They were paying £60 per week towards the debt. Mr Chisholm was not paying anything.

- 7 Mr Haq gave some further detail regarding the Applicant's circumstances. He confirmed that this was the only property that she let out. She was keen to move her parents in. He confirmed that the property would require some renovation. It was in a poor condition. Mr Chisholm was not maintaining it to a reasonable state of cleanliness. Mr Chisholm had also failed to maintain the garden and the Applicant's parents had carried out some garden maintenance in response to complaints from neighbours.

### Relevant Legislation

- 8 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Housing (Scotland) Act 1988, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

***“33 Recovery of possession on termination of a short assured tenancy.***

*(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 ish;*

*b) that tacit relocation is not operating; and*

*(c). . . . .*

*(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.*

*(2) The period of notice to be given under subsection (1)(d) above shall be—*

*(i) 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.*

*(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.*

*(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.*

*(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.”*

The Cost of Living (Tenant Protection) (Scotland) Act 2022 is not relevant to this application, it having been received by the Tribunal before 28 October 2022 and notices having been served prior to 6 September 2022.

### **Findings in Fact and Law**

- 9 The Applicant entered into a Short Assured Tenancy Agreement with the Respondents the term of which was 18 May 2017 to 18 November 2017.
- 10 The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 11 The tenancy continued by tacit relocation on a monthly basis.
- 12 On 20<sup>th</sup> April 2022 the Applicant delivered a Notice under section 33 of the Housing (Scotland) Act stating that the Applicant required the property back by 18 July 2022 and a Notice to Quit to the Respondents which sought to terminate the tenancy as at that date. The Notice to Quit was in the prescribed form. The Notices were served by email to Ms Riddler and Mr Talbert and by recorded delivery mail to Mr Chisholm. Ms Riddler and Mr Talbert had consented to receive correspondence via email.
- 13 The Notice to Quit terminates the tenancy as at 18 July 2022 which is a valid ish date.
- 14 Ms Riddler and Mr Talbert no longer reside at the property.
- 15 Mr Chisholm resides in the property alone. Mr Chisholm is middle aged with no dependents.
- 16 The Applicant intends moving her elderly parents into the property. The property is a ground floor flat and therefore suitable for said parents.
- 17 Mr Chisholm has failed to maintain the property in a reasonable condition. The property will require refurbishment prior to the Applicant's parents moving in.

- 18 There are outstanding rent arrears which are being paid off by Ms Riddler and Mr Talbert. Mr Chisholm has not paid anything towards the arrears. Mr Chisholm's rent is met by universal credit.
- 19 It is reasonable to make the order sought by the Applicant.
- 20 The provisions of section 33 of the Housing (Scotland) Act 1988 have been met.

### **Reasons for Decision**

- 21 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved. The Respondents had been served with the application paperwork and had been given the opportunity to attend the Case Management Discussion but had chosen not to do so, nor make written representations.
- 22 The Tribunal was satisfied that the Respondent had been served with a valid Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988. The issue for the Tribunal to determine therefore was whether it was reasonable in all the circumstances to grant an eviction order.
- 23 The Tribunal found Mr Haq to be credible and matter of fact in his submissions to the Tribunal on the Applicant's behalf. The Tribunal therefore accepted the situation outlined by Mr Haq, namely that the Applicant wished to recover the property in order to allow her elderly parents to move in. The Tribunal further accepted that two of the tenants had left the property, leaving Mr Chisholm who was a single male who resided alone. Whilst the Tribunal had some concerns regarding Mr Chisholm's vulnerability in terms of the matters outlined regarding the gas meter and the condition of the property, he had not attended the Case Management Discussion and the Tribunal was therefore unable to establish the exact nature of his personal circumstances. The Tribunal therefore accepted the Applicant's position that it would be reasonable to make an order in the particular circumstances of this case. There was nothing before the Tribunal to contradict the position put forward by the Applicant.
- 24 The Tribunal would however request that the Applicant, or her agent, alert the local authority to the Tribunal's concerns regarding the vulnerability of Mr Chisholm to ensure he can have access to appropriate support if required.
- 25 The Tribunal therefore determined to make an eviction order. The decision of the Tribunal was unanimous.

## **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.**

R. O'Hare

**11 May 2023**

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**Legal Member/Chair**

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**Date**