



**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/23/0090**

**Re: Property at 165 Talla Road, Glasgow, G52 2BA (“the Property”)**

**Parties:**

**Mr Nicholas Lewis, 14 Caddells Row, Edinburgh, EH4 6HY (“the Applicant”)**

**Miss Deborah Gray, 165 Talla Road, Glasgow, G52 2BA (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member) and Ann Moore (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a possession order be granted in respect of the property.**

**Background**

1.This application for a possession order in terms of Rule 66 of the Tribunal rules of procedure was first lodged with the Tribunal on 18<sup>th</sup> January 2023 along with a related application for a payment order with reference HPC/CV/230174.The applications were accepted by the Tribunal on 1<sup>st</sup> March 2023.A case management discussion was fixed for 21<sup>st</sup> April 2023 at 10am.

**Case Management Discussion**

2.The Applicant did not attend the case management discussion but was represented by Mr Haq and Ms Nivison, both of Martin and Co. The Respondent did not attend but the Tribunal noted that the application and papers, including the date and time of the case management discussion had been served on her by Sheriff officers placing the

papers through the letterbox at the property. The Tribunal was satisfied that fair notice had been given to the Respondent and that the Tribunal could proceed in her absence.

3.The Tribunal had sight of the application, two short assured tenancy agreements, one starting in 2011 and one in 2014 , a Form AT5 dated 14<sup>th</sup> February 2011, written confirmation that an AT5 Form was received by the Respondent for the second tenancy agreement which started in 2014, a Notice in terms of s33 of the Housing (Scotland) Act 1988 dated 23<sup>rd</sup> September 2022,a Notice to Quit the property also dated 23<sup>rd</sup> September 2022, a post office receipt in respect of the posting of these documents, an email to the Respondent attaching a Notice to Quit sent on 23<sup>rd</sup> September 2022, an email to Glasgow city Council, a Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 and a rent statement.

4.Mr Haq for the Applicant advised that the Respondent had originally entered into a short-assured tenancy at the property with effect from 21<sup>st</sup> February 2011 for a period of six months, but the tenancy had continued on a monthly basis thereafter. Martin and Co had given the Respondent a copy of Form AT5 in advance of the start of the tenancy, on 14<sup>th</sup> February 2011 at their office as was their usual practice. A second short assured tenancy agreement had been entered into on 21<sup>st</sup> February 2014 when the property was being sold to the Applicant and the Respondent had also received a Form AT5 before that tenancy commenced and had signed to acknowledge receipt of that form. In May 2014 the original landlord had sold the property to the Applicant and Martin and Co as agents of the landlord had advised the Respondent by email and by phone that the Applicant had bought the property and would now be the landlord for the property as well as having a new tenancy agreement signed. There were no changes to any of the pre-existing arrangements including the payment of monthly rent to Martin and Co on behalf of the landlord. This second tenancy had continued on a monthly basis after the expiry of its initial 6-month term on 21<sup>st</sup> August 2014.

5.On 23<sup>rd</sup> September 2022 a Notice in terms of section 33 of the Housing ( Scotland) Act 1988 was sent by post to the Respondent and signed for on 24<sup>th</sup> September 2022 and this gave notice that possession of the property was required on or before 21<sup>st</sup> December 2022. On 23<sup>rd</sup> September 2022 a Notice to Quit was emailed to the Respondent giving her notice to quit the property on behalf of the Applicant and landlord, on or before 21<sup>st</sup> December 2022.As the tenancy agreement continued on a month-to-month basis after 21<sup>st</sup> August 2022 this date of 21<sup>st</sup> December 2022 appeared to be the end date for the ongoing tenancy.

6.The landlord had a number of reasons for seeking possession of the property. The landlord had made contact with the Respondent in order to inspect the property but had been told by her that she would not be at the property so the inspection could not go ahead. The landlord understood that the property required to be completely refurbished. Over the years its condition had deteriorated and often access could not be gained. When access was gained it was noted that the property condition had deteriorated, and the landlord was concerned that it might become a health hazard. Mr Haq described damage and untidiness at the property and indicated that the landlord was concerned that he would not be able to take precautionary measures to maintain the condition of the property if he could not recover possession.

7. It was not known if the Respondent had a friend or partner staying at the property. There were no medical issues known to be affecting the Respondent. The Respondent had been in rent arrears over a lengthy period of time. The Applicant had not pursued the Respondent for arrears early on after he bought the property but later on in the tenancy the Respondent had been contacted regularly regarding the rent arrears. In March 2023 she had made contact with the landlord regarding making payment. She had raised the issue of a payment plan but had not been back in touch with any offer of payment of the arrears which by March 2023 were said to amount to £5820. The landlord had asked what the payment plan was to be but no further contact was received from the Respondent.

## **Relevant Legislation**

### **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 over 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; and
  - (c) .....
  - (d) The landlord, (or where that 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 two 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 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 in 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.

8. The Cost of Living (Tenant Protection) (Scotland) Act 2022 is relevant to this application it having been received by the tribunal on 18th January 2023.

9. The Tribunal considered that it had sufficient information upon which to make a decision and that the proceedings had been fair.

## **Findings in Fact**

10. The Respondent was originally a tenant at the property by virtue of a short-assured tenancy agreement entered into with the previous owner of the property with effect from the 21st of February 2011 and this tenancy continued on a month-to-month basis after its initial 6-month term.

11. A new short assured tenancy was entered into by the parties when the Applicant was in the process of acquiring ownership of the property in 2014.

12. This short-assured tenancy commenced on 21st of February 2014 for a period of six months and continued on a monthly basis thereafter.

13. The Applicant became landlord of the property by virtue of this agreement.

14. The tenancy between the parties was a short-assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988

15. On 23rd September 2022 agents for the Applicant sent to the Respondent a notice under Section 33 of the Housing (Scotland) Act 1988 stating that the landlord required the property back by 21st December 2022.

16. On 23rd September 2022 a Notice to Quit the property was sent to the Respondent which sought to terminate the tenancy as of the 21st of December 2022 and this Notice to Quit was in the prescribed form.

17. The Notice to Quit terminated the tenancy with effect from 21st of December 2022 which is a valid end date for the tenancy.

18. Tacit relocation is not in operation in relation to this tenancy.

19. A notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was sent to Glasgow City Council in relation to this application on 11th January 2023.

20. The Applicant understands that the property condition has deteriorated with damage and untidiness being noted when access can be gained.

21. The Respondent is in rent arrears in terms of the tenancy agreement and these stand in excess of £5000 as of the date of the case management discussion.

22. The Respondent contacted agents on behalf of the landlord in March 2023 to suggest a payment plan, but at no stage made any offer of payment towards the rent arrears.

## **Reasons for Decision**

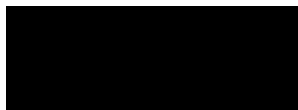
23. The tribunal was satisfied that the Respondent had been served with a valid notice to quit and Notice in terms of section 33 of the Housing (Scotland) Act 1988. There were errors in these notices in that the date when the tenancy agreement was said to have commenced was stated to be 2011 and not 2014. Aside from these errors the tribunal noted that the section 33 notice and the Notice to Quit were clear in their terms and gave the Respondent notice of when the property was required and when the tenancy would come to an end. The dates given coincided with an ish or end date for the tenancy. The tenancy agreement between the parties entered into in February of 2014 still had the name of the previous landlord on it but the tribunal had been advised that the tenant was told by e-mail and phone that she had a new landlord, and it was noted that the Notice to Quit ran in the correct name of the Applicant. The tribunal was satisfied that the Applicant had become landlord at the property in terms of the tenancy agreement which commenced on the 21st of February 2014.

24. The tribunal required to consider whether it was reasonable to grant a possession order in the circumstances of this application. The Respondent's situation was largely

unknown, although she had been a tenant at the property for a number of years. The landlord had concerns as to deterioration in the condition of the property when access could not always be gained for inspection purposes and also there are ongoing substantial rent arrears. In the light of these combined circumstances and the lack of any information to suggest that it would be unreasonable to make a possession order the tribunal was satisfied that it was reasonable to make an 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.**



**21/04/23**

---

**Legal Member/Chair**

---

**Date**