



**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 1988 Act”)**

**Chamber Ref: FTS/HPC/EV/23/0157**

**Re: Property at 92 Mingulay Street, Milton, Glasgow, G22 7DZ (“the Property”)**

**Parties:**

**Mr Michael James Bonner, Mrs Teresa Maria Bonner, 97 Jackson Drive, Stepps, Glasgow, G33 6GE (“the Applicants”)**

**Ms Arlene Rankin, 92 Mingulay Street, Milton, Glasgow, G22 7DZ (“the Respondent”)**

**Tribunal Members:**

**Steven Quither (Legal Member) and Elizabeth Currie (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for possession be GRANTED under s33 of the 1988 Act.**

**1. BACKGROUND**

This is an application to bring to an end a Short Assured Tenancy in respect of the Property, commencing 10 November 2010, initially for 6 months at a rent of £475 per calendar month and continuing thereafter by tacit relocation on a 2 monthly basis. In terms of s33 of the 1988 Act as amended by the Coronavirus (Recovery and Reform) (Scotland) Act 2022, the Tribunal requires to be satisfied not only that the formal requirements of said section have been complied with but also that it is reasonable to make the order for repossession. Accordingly, there is now an element of discretion and a greater burden on a landlord looking to recover possession under that section than in its original version. The supporting documentation for the application confirmed that appropriate notice periods had been given in respect of the Notice to Quit and s33 Notice and that the appropriate local authority had been notified of the application in terms of s11 of the Homelessness etc. (Scotland) Act 2003.

In their application, the Applicants stated that they wished repossession in order to sell the Property.

The application was accepted by the Tribunal by Notice of Acceptance of 3 February 2023, following which a Case Management Discussion (“CMD”) was fixed for 4 April 2023.

## **2. CASE MANAGEMENT DISCUSSION**

The CMD duly took place by teleconference on 4 April 2023, when the Applicants participated along with their solicitor, Miss Donnelly, from TC Young, Solicitors, Glasgow, along with the Respondent.

For the Applicants, Miss Donnelly advised:--

- a) There was no up to date information regarding the Applicants' plans to sell the Property. However, in light of the fact that all of the statutory requirements for an application such as this had been met, she was asking the Tribunal to consider it reasonable to grant the order now sought.
- b) She understood the Respondent was not opposing the order being made, having taken advice and having now made an application to be rehoused, which was progressing.
- c) So far as the Applicants were concerned, the Property was free of any mortgage and had previously been the family home of the Second Applicant. She had retired in November 2020 and the First Applicant, who was self-employed, was looking to wind down with a view to retiring also. The proceeds from any sale would supplement any income they would receive.
- d) It was appreciated that any order made would be affected by the provisions of the Cost of Living (Tenant Protection) (Scotland) Act 2022, which provisions would afford the Respondent time to finalise her own rehousing application.
- e) There had been issues with maintenance work for the Property, in respect of which the Applicants were seeking access to attend to same.
- f) The Applicants clarified that the Property had been lived in by the Second Applicant's stepfather, after the Applicants were married. He had subsequently moved into the Second Applicant's pre-marriage home, but he had then moved into care in February 2023. However, the question of sale of the Property had been concerning the Applicants for some time and they now wished to proceed. To that end, they had instructed Stewarts & Murdochs, Solicitors, Glasgow to deal with the sale but had been advised that the Respondent's occupation of the Property would require to be brought to an end before any sale could proceed.
- g) Stewarts & Murdochs had then referred that matter to the solicitors acting for the Applicants in this application.
- h) The Second Applicant confirmed all of the foregoing, thus affording the Tribunal first hand evidence of the Applicants' position.

The Respondent's position was that:--

- a) She was not in essence wishing to dispute the order being made and confirmed an application to be rehoused had been made and was progressing reasonably well, possibly with a resolution in sight within the next 2-3 months.
- b) She lived with and was the full-time carer for her 20 year old son who was autistic and had other special needs, her main concern was to mitigate any upheaval for him.
- c) Since matters had reached this stage, she was keen to leave the Property just as soon as she could and she would make the housing authority with whom she was dealing aware of any order made by the Tribunal.
- d) She had not received any informal indication of the Applicants' intention to sell before receiving formal Notice to Quit.

By way of response to this last point, the Second Applicant advised of some discussion in August 2020 about a possible rent increase, which had become slightly acrimonious and advised that about that time the Respondent had been made aware of the Applicants' slightly longer term intentions as regards the Property.

Given that all procedural matters had been complied with, the Tribunal did not regard any informal preliminaries, or lack of them, to the application to be of any significance.

In closing, Miss Donnelly submitted that the Tribunal could be satisfied by the oral evidence of the Second Applicant that the intention to sell was genuine. Furthermore, as an "officer of the court", she could confirm her firm had received a referral from Stewarts & Murdochs in the circumstances previously outlined, which the Tribunal could also regard as sufficient evidence of a true intention to sell. In all these circumstances and in the absence of any substantive opposition, she was asking the Tribunal to consider it reasonable to make the order now sought.

### **3. FINDINGS IN FACT**

Based on the documentation produced prior to and representations made at the CMD, the Tribunal was satisfied that the parties had entered into a Short Assured Tenancy on the terms stated in preceding Paragraph 1, which continued until these proceedings. It was also satisfied that appropriate procedural steps had been taken to bring the tenancy to an end and that the Applicants were now seeking to sell the Property.

### **4. REASONS FOR DECISION**

Since the Tribunal was satisfied as to the nature of the Tenancy as indicated in the preceding paragraph, that appropriate procedural steps had been taken to bring the tenancy to an end and that the Applicants were now seeking to sell the Property, it then required to consider if it was reasonable to make the order sought, as required for such applications in terms of the provisions of s33 as amended. It was so satisfied, on the basis that the order would afford clarity and certainty to the parties and, in any event, was not in any substantive way opposed by the Respondent.

### **5. DECISION**

To make the order for possession sought by the Applicants

#### **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.**

# SR Quither

SR QUITHER

4 APRIL 2023

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Legal Member/Chair

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Date