



**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/23/1914**

**Re: Property at Flat 0/2, 574 Paisley Road West, Glasgow, G51 1RF (“the  
Property”)**

**Parties:**

**Mr Atif Ahmed, 7 Parkholm Quadrant, Glasgow, G53 7ZH (“the Applicant”)**

**Mr Ashiq Hussain, Flat 0/2, 574 Paisley Road West, Glasgow, G51 1RF (“the  
Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Mrs E Dickson (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.**

**Background**

1. This is a Rule 66 application received in the period between 12<sup>th</sup> June and 17<sup>th</sup> July 2023. The Applicant is seeking an order for possession of the Property. The Applicant lodged a copy of the short assured tenancy agreement between the parties that commenced on 1<sup>st</sup> August 2017 until 1<sup>st</sup> February 2018 and monthly thereafter, copy Notice to Quit and section 33 notice together with evidence of posting on 30<sup>th</sup> September 2023, track and trace information showing delivery of the notices on 4<sup>th</sup> October 2023, copy section 11 notice with evidence of service, and Form AT5.
2. Notification of the application and forthcoming Case Management Discussion was served personally on the Respondent by Sheriff Officers on 12<sup>th</sup> September 2023.

## **The Case Management Discussion**

3. A Case Management Discussion took place by telephone conference on 17<sup>th</sup> October 2023. The Applicant was in attendance. The Applicant's representative, Mr Baig, was also in attendance,
4. The Applicant addressed the Tribunal on the issue of whether service of the notices was timeously made. He said the notices were posted using Recorded Delivery on 30<sup>th</sup> September 2023. He had spoken to Royal Mail, who explained the procedure would be to try to deliver the item the following day. If the recipient was not in, they would try on another couple of occasions before leaving a card informing the recipient they had to collect the item. The Applicant said the Respondent had received the notices and had not raised any issue in regard to the date of receipt.
5. The Applicant said he has a good relationship with the Respondent, who has always paid his rent on time, and has been a good tenant. As far as he was aware, the Respondent had been in touch with social housing providers and had been told he would be prioritised for alternative housing if an order was granted.
6. The Applicant said he intends to sell the Property. The monthly mortgage payments have risen from £380 to over £800, and this is not covered by the rent of £500. The Applicant is having to pay the extra money each month as well as insurance and factoring fees. It is not financially viable to continue the situation. There are also likely to be major communal works to the building in future, and this would make matters very difficult for the Applicant.
7. Responding to questions from the Tribunal regarding the Respondent's circumstances, the Applicant said he believes the Respondent resides with his wife, and no dependants. He is believed to be in part-time employment. The Applicant was unaware of any vulnerabilities that should be taken into account by the Tribunal.

## **Findings in Fact and Law**

8.
  - (i) Parties entered into a short assured tenancy agreement in respect of the Property that commenced on 1<sup>st</sup> August 2017 until 1<sup>st</sup> February 2018.
  - (ii) Notice to Quit and Section 33 Notice were served on the Respondent.
  - (iii) The short assured tenancy has reached its ish date.
  - (iv) The contractual tenancy terminated on 1<sup>st</sup> October 2022.
  - (v) Tacit relocation is not in operation.

- (vi) The Applicant has given the Respondent notice that they require possession of the Property.
- (vii) It is reasonable to grant the order for possession.

### **Reasons for Decision**

9. Section 33 of the Act provides that the Tribunal may make an order for possession if satisfied that the short assured tenancy has reached its finish, tacit relocation is not operating, the landlord has given notice to the tenant that they require possession, and it is reasonable to make the order.
10. The Tribunal considered the matter of service of the Notice to Quit and Section 33 notice. Section 54 of the Housing (Scotland) Act 1988 provides for service of such notices by Recorded Delivery, in addition to other methods. Section 7 of the Interpretation Act 1978 provides that where an Act authorises or requires any document to be served by post then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. There is no contrary intention stated in section 54 of the 1988 Act, therefore, the Tribunal considered that section 7 of the 1978 Act applied.
11. The Tribunal considered the track and trace information provided by Royal Mail which appeared to contradict the information provided to the Applicant by Royal Mail. The track and trace information indicated the item was delivered and signed for by 'X' on 4<sup>th</sup> October 2023. The identity of 'X' was not clear, and there was no reference to the Respondent by surname, as would normally be the case if the Respondent had attended at the Post Office to collect the item. The Tribunal took into account that the Respondent was not present to confirm the date of receipt of the notices, or make any challenge to the date of service.
12. The Tribunal accepted that the Applicant had properly addressed, pre-paid and posted the letter containing the documents by Recorded Delivery on 30<sup>th</sup> September. In the absence of definitive proof to the contrary, the Tribunal agreed that service had been properly effected by posting by Recorded Delivery on 30<sup>th</sup> September with the expected date of receipt being the following day, in the ordinary course of post.
13. Accordingly, the contractual tenancy has been terminated and tacit relocation is not in operation. The Applicant has given the Respondent notice that they require possession of the Property.
14. In considering reasonableness, the Tribunal was satisfied that the Applicant is in a difficult position financially, given the increase in his mortgage payments for the Property, and the fact that the rent does not cover the mortgage payments. Furthermore, there is the prospect of considerable cost to the Applicant if communal building works go ahead while the Property is in his

ownership. The Tribunal was satisfied that it is in the best interests of the Applicant to sell the Property. The Tribunal considered that a *prima facie* case had been made by the Applicant in respect of reasonableness. The Tribunal took into account the limited information given regarding the Respondent's circumstances, however, the Respondent did not appear to make any further case in respect of reasonableness.

15. In all the circumstances, the Tribunal considered it reasonable to grant the order.

### **Decision**

16. An order for possession of the Property is granted under section 33 of the Housing (Scotland) Act 1988. The order is not to be executed prior to 12 noon on the earlier of (a) the day following the end of a period of 6 months beginning with the day on which this order was granted, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022.

### **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.**

# H. Forbes

Legal Member/Chair

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**17<sup>th</sup> October 2023**  
Date