



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/EV/22/2123

**Re: Property at 2/2 203 Kirkton Avenue, Knightswood, Glasgow, G13 3AF (“the
Property”)**

Parties:

**Mr Liam Darroch, Apt G13 Sarai Apartments, East Crescent, Palm Jumeirah,
Dubai, UAE, PO BOX 510, United Arab Emirates (“the Applicant”)**

**Mr Derek Boyd, 2/2 203 Kirkton Avenue, Knightswood, Glasgow, G13 3AF (“the
Respondent”)**

Tribunal Members:

Shirley Evans (Legal Member) and Ann Moore (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order against the Respondent for possession of
the Property at 2/2 203 Kirkton Avenue, Knightswood, Glasgow, G13 3AF under
Section 33 of the Housing (Scotland) Act 1988 be granted. The order will be
issued to the Applicant after the expiry of 30 days mentioned below in the right
of appeal section unless an application for recall, review or permission to appeal
is lodged with the Tribunal by the Respondent. The order will include a power
to Officers of Court to eject the Respondent and family, servants, dependants,
employees and others together with her goods, gear and whole belongings forth
and from the Property and to make the same void and redd that the Applicant or
others in his name may enter thereon and peaceably possess and enjoy the
same.**

Background

- 1. This is an action of possession of the Property raised in terms of Rule 66 of
the First-tier Tribunal for Scotland Housing and Property Chamber
(Procedure) Regulations 2017 (“the Regulations”).**

2. The matter called for a Case Management Discussion (“CMD”) on 10 November 2022. The Applicant was represented by Miss McGeogh from Harper MacLeod, solicitors. Mr Boyd the Respondent appeared on his own behalf. The case was conjoined with an application for recovery of rent arrears under reference FTS/HPC/CV/2124.
3. Miss McGeoch moved the Tribunal to make an Order for eviction together with an Order for repayment of arrears in the increased sum of £4800.20. She explained that the tenancy was a short assured tenancy and that notices had been served in terms of Section 33 of the Housing (Scotland) Act 1988. The Respondent was in significant rent arrears. She further submitted that the Applicant had a mortgage over the Property and was suffering financial hardship with the rent not being paid. Her colleague had received a phone call on 26 October 2022 from the Respondent advising he was in the process of moving out.
4. The Respondent’s position was he accepted that up to the end of May/start of June 2022 he was in arrears of £2850.20, but he disputed he was in arrears of £4800.20 as he was entitled to Housing Benefit. He explained that whatever the Applicant had said to the Housing Benefit Department his entitlement to Housing Benefit had been suspended at the end of May 2022 at the expiry of the Notice to Quit and Section 33 Notice despite the fact he continued to live in the Property. In the circumstances the Tribunal continued the case to a Hearing for evidence to be led as to the level of arrears and for parties to lodge any correspondence they had had with the Housing Benefit Department. The Note of the CMD is referred to.

Hearing

5. The case called for a Hearing on 12 January 2023 together with the case for arrears under reference FTS/HPC/CV/2124. The Applicant was again represented by Miss McGeogh from Harper MacLeod, solicitors. The Applicant was also in attendance. Mr Boyd again appeared on his own behalf.
6. A copy of the Short Assured Tenancy between the parties and AT5 dated 31 October 2017, a Notice to Quit and Section 33 Notice both dated 9 November 2021 with an Execution of Service from Sheriff Officers dated 11 November 2021, Title Number GLA195648 and a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003 addressed to Glasgow City Council dated 1 July 2022 and a rent statement were lodged with the Application. Subsequently six further Inventories of Productions were lodged on behalf of the Applicant. These included further rent statements to 30 September 2022 within the second Inventory of Productions, a copy email from Countrywide to the Applicant with copy email from the Respondent dated 6 July 2022 within the third Inventory of Productions, a copy letter from Glasgow City Council to Countrywide dated 18 June 2022, an email from the Applicant to Harper MacLeod dated 18 June 2022 and emails between the Applicant and the Housing Benefit Department dated 24 and 27 June 2022 within the fourth Inventory of Productions, rent reminders and emails issued by Countrywide to

the Respondent from 9 March 2020 to 23 May 2022, emails between the Respondent and Countrywide in May and June 2020, 29 April 2021 and 11 May 2021, a letter dated 4 March 2022 from Glasgow City Council to Countrywide, copy payment schedules from Glasgow City Council to Countrywide dated 7 March, 4 April and 3 May 2022, a copy email from Housing Benefit to Countrywide dated 24 June 2022, a letter from Glasgow City Council to Countrywide dated 1 July 2022 and an email dated 6 July 2022 from the Respondent to Countrywide within the fifth Inventory of Productions, email exchanges between the Applicant and the Revenue & Benefits Department at Glasgow City Council dated 29 November 2022 and 11 August 2022 within the sixth Inventory of Productions and a Tenant Transaction Report within the seventh Inventory of Productions. These documents were considered by the Tribunal.

7. As a preliminary matter Miss McGeogh moved the Tribunal to allow the Applicant's sixth and seventh Inventories of Productions to be received although late. Mr Boyd had no objection. The Tribunal allowed the sixth and seventh List of Documents to be received although late. Miss McGeogh also moved to increase the arrears figure from £4800.20 to £7028.01. Mr Boyd had no objection to that. The Tribunal accordingly allowed the arrears figure to be increased to £7028.01.
8. Mr Boyd also raised a preliminary matter and pointed out that the figures detailed in the Applicant's seventh Inventory of Productions included in the Tenant Transaction Report dated from 31 October 2017 to 12 January 2023 were different from the figures contained in the rent statements previously lodged in the second Inventory of Productions. In response Miss McGeogh explained that the Tenant Transaction Report was an internal document which also included payments made to the Landlord and which showed any payments made apportioned to the oldest debt. The rent statements lodged in the second Inventory of Productions were prepared for the tenant's benefit to show the arrears and how these had accrued. Mr Boyd confirmed he understood that and that Miss McGeogh's response answered his query.
9. Miss McGeoch thereafter moved the Tribunal to grant an Order for eviction and an Order for Payment for £7028.01. As the Respondent had admitted arrears of £2850.20 to the end of May/start of June 2022 in the CMD she moved that Mr Boyd be asked to lead his evidence first of all. In the circumstances the Tribunal agreed that it would make sense for the Respondent to do so.

The Respondent's Evidence

10. Mr Boyd proceeded to give evidence on his own behalf. His position had not changed from the CMD, namely that the Applicant had not notified the Housing Benefit Department that there was rent payable after 31 May 2022. His position was that the Applicant had advised the Housing Benefit Department in his email of 27 June 2022 that there was no liability for rent after 31 May 2022. He explained that up until January 2022 Housing Benefit had been paid to him and that he would top up these payments, but then the

Housing Benefit had been paid direct to the Applicant. He had not received a rent statement or details as to how to pay the rent since 31 May 2022. He did not understand how he can be charged for rent when the Applicant had contacted the Housing Benefit Department directly and would not make direct payments to him. Mr Boyd stated that the arrears would not be as high as be £7028.01 had the Applicant advised Housing Benefit that rent would still be charged.

11. Mr Boyd accepted he had fallen behind in his rent payments. At the time the Notice to Quit was issued in November 2021 he was in arrears of about 3-4 months. Mr Boyd's evidence was that the correspondence showed that Housing Benefit were looking for confirmation from the Applicant that rent was still being charged and as the Applicant did not do that Housing Benefit was not reinstated and arrears increased. His evidence was to the effect that it suited the Applicant to allow the arrears to increase to the current level as it would be easier for him to evict the Respondent. Mr Boyd stated that he had to be in a certain amount of arrears before the Applicant could apply for an Order for eviction.
12. On a personal level, Mr Boyd advised that he had inflammatory arthritis. He had been employed as a car mechanic but unfortunately his condition stopped him from working. He had lost the use of his hands over the last two years. He received PIP of about £237 per month and JSA of about £147 per fortnight. He had to pay his phone bill, credit card and other debts, utility bills and food shopping. His 8 and a half year old son stayed with him one night during the week and at weekends.
13. In cross examination, Mr Boyd explained he was keeping his other payments as up to date as best he could. He was in receipt of Council Tax benefits and explained the process for obtaining that, PIP and JSA. He explained he had to attend for medical assessments for PIP which was due to be reviewed in a few weeks. He accepted he had to provide information to obtain these benefits, had given consent for his medical records to be accessed by PIP and if further information was required he would get that information to whoever requested it as he would not go without receiving his PIP. On being questioned about his Council Tax liability, he explained that it was processed with Housing Benefit and the only thing he had queried was why it had stopped. They had looked at that and Council Tax benefit had been re-instated. Miss McGeough questioned whether Mr Boyd had asked Housing Benefit what they needed to re-instate Housing Benefit. He advised that he understood they needed confirmation he was still living in the Property and was paying rent, but the Applicant had advised there was no rental liability.
14. The Tribunal asked Mr Boyd to point to an email where the Applicant had advised Housing Benefit that there was no rental liability. He was unable to do so. The Tribunal asked parties to refer to specific productions in their questions and answers bearing in mind there were numerous documents lodged, rather than speaking in generality without reference to the documents lodged.

15. On being further questioned by Miss McGeoch, Mr Boyd confirmed he had not emailed Housing Benefit. He accepted he had emailed Countrywide on 6 July 2022 to say he was in the course of moving out and asking that they contact Housing Benefit to confirm he was still living there so it could be re-instated.
16. With reference to the sixth Inventory of Productions, Miss McGeoch referred Mr Boyd to an email dated 29 November 2022 from the Applicant to Housing Benefit in which Mr Darroch advised that there was a continuing rental liability. She enquired whether Mr Boyd had received any correspondence from the Housing Department since that email had been sent. He advised he had not.
17. Mr Boyd confirmed that he had sought advice from his Welfare Rights Officer when he had issues with his PIP. He was questioned about any help he had sought about his Housing Benefit. He advised he had sent the Housing Benefit Department a copy of the Lease and had contacted Housing Benefit directly.
18. With reference to the Short Assured Tenancy lodged, Mr Boyd accepted that he had initialled this on every page and that in terms of Clause 1.11 rent was stated at £650 per month. He accepted he had signed the tenancy agreement. Miss McGeogh finished her cross examination.
19. The Tribunal proceeded to question Mr Boyd. On being questioned he accepted there had been no variation in the rental charge set out in Clause 1.11. He repeated his concern that the Applicant had allowed arrears to snowball to their current level by not advising Housing Benefit that rent was still being charged.
20. The Tribunal referred Mr Boyd to the rent statements lodged under the second Inventory of Productions and pointed out that before his Housing Benefit had been suspended his payments towards the rent were for various amounts which did not meet the full rental charge of £650. Mr Boyd explained that he was in receipt of Housing Benefit of £410.68 per month. This was reduced to £409.48 after Housing benefit was paid direct to cover an overpayment. He accepted there was an approximate shortfall of £240 per month. He explained he would pay as much as he could on top of that to meet the full rental liability but could not always do so. He also accepted that he had not topped up personal payments towards his rent after Housing Benefit was paid direct to the Applicant. He explained that he did not have any funds to pay the shortfall in rent. He accepted also that there was no difference in his Housing Benefit entitlement since the rent was paid direct to the Applicant by the Housing Benefit Department.
21. The Tribunal questioned Mr Boyd with regards to his email of 6 July 2022 to Countrywide contained within the Applicant's third Inventory of Productions. This stated he was making arrangements to move out and was arranging storage. The Tribunal queried why he had not then moved out. Mr Boyd stated he had been advised not to move out by the Council. Soon after that email he caught COVID and was admitted to hospital as his arthritis had

worsened. He explained that he had an email exchange with Countrywide, but had not then re-arranged storage and removal. He had gone back to his mother's house. On being questioned he advised he was at his mother's house currently and had been there for about 4 days, but that his possessions were still at the Property and he still lived there. A private let fell through as they did not want someone on benefits. He knew that the situation cannot go on indefinitely and was selling some personal possessions to help his financial situation.

22. The Tribunal questioned Mr Boyd as to whether he had taken advice about his housing options either from the Council or his Welfare Rights Officer. He explained that he did not think his Welfare Rights Officer would be able to help him and he had been told not to move by the Council. He was a single man and would not get priority.
23. On being further questioned by the Tribunal, Mr Boyd confirmed he was resigned to the fact that the rent was unaffordable. Mr Boyd concluded his evidence.

The Applicant's Evidence

24. The Applicant then gave evidence. Miss McGeoch referred him to his email of 27 June 2022 to the Housing Benefit Department. He advised he had confirmed that the rental charge was £650 per month, but that Housing Benefit had been awarded considerably below that amount at £410.68. He felt his email made that clear but that he did not want Mr Boyd to continue to live there after the expiry of the Notice to Quit as neither Mr Boyd or Housing Benefit had met the rental payments.
25. He explained that in March 2020 the guarantor had removed from the Property. He was aware that the Respondent had fallen into arrears and had contacted the Housing Benefit Department to see if they could help the Respondent. He explained he would never normally take tenants on benefits. However, he realised Mr Boyd had nowhere to go to.
26. He was then referred to an email of 11 August 2022 addressed to him from the Housing Benefit Department which referred to an enquiry of 15 July 2022. Mr Darroch was not sure what that related to and thought the reference to 15 July 2022 was an error. He gave evidence that at no stage did he advise that there was no rental liability in fact he made it clear the rental liability was £650 per month. He confirmed that with regards to his email of 29 November 2022 to the Housing Benefit Department in which he re confirmed Mr Boyd continued to live there without paying rent, he had heard nothing from them in reply.
27. Mr Darroch explained that he had a fixed rate mortgage of about £64000 but due to the fact he was not receiving rent he was only paying interest and had stopped repaying the capital. That fixed term came to an end in January 2024

and he was concerned about that. On top of that he also had factors fees, Landlord Registration fees, insurance, gas safety fees etc. For some reason utility bills for the Property were being sent to his parents' house which was a strain on them. He could not understand why that was happening.

28. Mr Boyd had no questions for Mr Darroch; he accepted everything that Mr Darroch had said in evidence.
29. The Tribunal questioned Mr Darroch as to whether he had varied the tenancy agreement to reduce the rental liability to nil. He advised that he had not changed the rental liability but had confirmed Mr Boyd was still living in the Property but not paying the rent. That remained the case. He explained that initially Mr Boyd had given the impression he was moving out, that he had held off taking proceedings, but when arrears had increased he decided he had to proceed. Mr Darroch concluded his evidence.

Submissions

30. Miss McGeoch made submissions on behalf of the Applicant. She moved the Tribunal to grant an Order to evict and an order for payment for £7028,01 in relation to the conjoined arrears action. She moved the Tribunal to make a number of findings in fact that -
- i. parties had entered into a Short Assured Tenancy on 31 October 2017
 - ii. monthly rent of £650 was due,
 - iii. there was an ongoing obligation to pay rent,
 - iv. there had been no variation in the tenancy agreement,
 - v. the contractual Short Assured Tenancy had been terminated on 31 May 2022 following upon the service of a Notice to Quit on 9 November 2021
 - vi. that the tenancy was a statutory Short Assured Tenancy and that
 - vii. arrears were £7028.01.
31. She submitted that the Applicant was entitled to an Order for eviction under Section 33 of the Housing (Scotland) Act 1988. A Notice to Quit and a Notice under Section 33 of the Housing (Scotland) Act 1988 had been served. The terms of Section 33 also required the Tribunal to consider whether it was reasonable to evict.
32. On the matter of reasonableness she submitted the Respondent was in significant arrears of £7028.01. Mr Boyd accepted he was in arrears of £2850.20 to the end of May 2022. He admitted he liable to pay rent of £650 per month. That obligation to pay rent was different from any entitlement he may have to Housing Benefit. The Respondent had not made any offers to repay the arrears which he had accepted had accrued before the expiry of the Notice to Quit. He had failed to meet the full rental liability despite being in receipt of other benefits. She further submitted the Respondent had known to take advice from others with regards to his other benefits but had failed to do so to sort out his Housing Benefit.

33. She submitted the Applicant could not be expected to have the Respondent continue to live in the Property without rent being paid. She referred to Mr Boyd's evidence that he understood that the current situation could not go on indefinitely. She also referred to Mr Boyd's evidence that he was not in a position to pay the rent. She further submitted the Applicant had various financial obligations such as his mortgage which he was still having to meet despite the Respondent not paying rent.
34. She submitted that Mr Boyd had originally advised he was moving out and had been in contact with her office in October to advise that he was planning to do so. In all the circumstances she submitted it was reasonable to evict.
35. In response Mr Boyd submitted that the arrears would not be at the current figure had the Applicant or Letting Agents confirmed with the Housing Benefit Department that rent was still being charged. He could not afford the full rent of £650 per month. He would have moved out sooner, but struggled every day with his disability. He had attempted to get another property, but no letting agents or landlords wanted anyone on Housing Benefit. He had been advised that as a single man he would not be treated with priority and was advised to stay in the Property until such time as the Tribunal made a decision.

Findings In Fact

36. The Applicant and the Respondent entered into a Short Assured Tenancy on 31 October 2017 in terms of which the Applicant agreed to lease the Property to the Respondent.
37. In terms of Clause 1.10 of the Short Assured Tenancy Agreement the tenancy expired on 31 October 2018 and if not brought to an end by either party on that end date it continued on a monthly basis until ended by either party.
38. The Respondent agreed to pay £650 rent per month in terms of Clause 1.11 of the Short Assured Tenancy Agreement.
39. The terms of the Short Assured Tenancy Agreement have not been varied. The Respondent has an ongoing obligation to pay rent of £650 per month.
40. The Respondent was previously in receipt of Housing Benefit. The Housing Benefit did not meet the full rental liability. The Respondent made up payments as best he could in an attempt to meet his full rent liability of £650. The Respondent fell into rent arrears. The Applicant's letting agent contacted the Respondent about the arrears in an attempt to get the Respondent to reduce the arrears.
41. The Applicant served a Notice to Quit and a Section 33 Notice both dated 9 November 2021 by Sheriff Officers on 11 November 2021 on the Respondent. The Notice to Quit and the Section 33 Notice expired on 31 May 2022. The Notice to Quit reduced the contractual Short Assured Tenancy to a statutory Short Assured Tenancy on 31 May 2022.

42. The Respondent has made no personal payments towards his rent or arrears since January 2022. The Respondent was in arrears of rent of £2850.20 as at 31 May 2022.
43. The Respondent's Housing Benefit was suspended at the end of May 2022. Both the Applicant and the Respondent advised the Housing Benefit Department that the Respondent continued to live in the Property after 31 May 2022. The Respondent sent a copy of the Short Assured Tenancy Agreement to the Housing Benefit Department.
44. The Respondent advised the Applicant's letting agents on 6 July 2022 that he was in the course of moving out of the Property.
45. The Respondent remains in the Property. He lives alone. He has overnight contact with his young son on a weekly basis. He has been advised not to move out of the Property. He has not taken advice on his housing options.
46. The Respondent continues to accrue arrears. He has not entered into any repayment arrangements with the Applicant. The monthly rent of Respondent cannot afford to pay the monthly rent of £650. Arrears as at 12 January 2023 are £7028.01.
47. The Applicant served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on Glasgow City Council on 1 July 2022.

Reasons for Decision

48. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the oral submissions made by Miss McGeoch and Mr Boyd. The Tribunal concluded that the Applicant was entitled to seek repossession of the Property under Section 33 of the Housing (Scotland) Act 1988. There was a properly constituted Short Assured Tenancy with the Respondent. The Tribunal was satisfied that the statutory provisions of Section 33 of the Housing (Scotland) Act 1988 had been met namely that the Short Assured Tenancy had reached its term (termination date); the Notice to Quit brought the contractual Short Assured Tenancy to an end on 31 May 2022; and that the Applicant had given the Respondent six months' notice in terms of Section 33(1) (d) of the Housing (Scotland) Act 1988 as amended by Schedule 1 paragraph 4 (3) of the Coronavirus (Scotland) Act 2020 stating that possession of the property was required on 31 May 2022.
49. The terms of Section 33 of the Housing (Scotland) Act 1988 would normally entitle the Applicant to a right of mandatory repossession of the Property. In terms of Schedule 1, paragraph 3 (4) of the Coronavirus (Scotland) Act 2020 the Applicant also has to satisfy the Tribunal that it is reasonable to evict. In

determining whether it is reasonable to grant the order the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case.

50. In this case the Tribunal considered there was little dispute as to the facts. Arrears were increasing as the Respondent could no longer afford to meet the full rental charge. The Tribunal was satisfied that the Respondent had incurred and was continuing to incur substantial rent arrears. Mr Boyd accepted that his monthly rent was £650. He accepted that by 31 May 2022 he was in arrears of £2850.20. He accepted that he could not afford to meet the rent. Even before Housing Benefit had been suspended the Tribunal noted that the Respondent was unable to make up personal payments to meet the full rent. The Tribunal were satisfied that the Applicant's Letting agents had done what they could reasonably be expected to do to get the arrears reduced. The Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Glasgow City Council had been served.

51. The Tribunal considered the Respondent had been given more than enough opportunity to find somewhere else to live. Mr Boyd indicated on 6 July 2022 to the Applicant's Letting Agents that he was in the course of moving out. The Tribunal accepted his evidence that he had been advised not to do so. The Tribunal also accepted Mr Boyd's evidence that he appreciated that the situation could not continue as it was. The Tribunal was empathetic towards the Respondent and the predicament he now found himself in. However the Tribunal noted he stated he had taken advice from a Welfare Rights Officer in relation to his benefits. The Tribunal consider that the Respondent will no doubt be sign posted to seek advice on his housing options should he seek such advice. Whilst the Respondent suffers from a disability he accepts that he simply cannot afford to continue to live in the Property. The Respondent agreed he had contracted with the Applicant to pay rent of £650 per month and to allow the Respondent continue to live in the Property without payment of rent would in the opinion of the Tribunal be to the prejudice of the Applicant. The Applicant has ongoing financial obligations relating to the Property and he, on the Respondent's own evidence, cannot be expected to tolerate that. The balance of reasonableness in this case accordingly is weighted towards the Applicant.

52. In the circumstances the Tribunal considered that the terms of Section 33 of the Housing (Scotland) Act 1988 have been met and that it was reasonable to grant an eviction order.

Decision

53. The Tribunal granted an order for repossession. 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.

Shirley Evans

14 January 2023

Legal Chair

Date