Housing and Property Chamber
First-tier Tribunal for Scotland

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/22/0588

Re: Property at 79D Hallcraig Street, Airdrie, ML6 6AW ("the Property")

Parties:

Manvir Singh, 9c Old Bothwell Road, Bothwell, Glasgow, G71 8AW ("the Applicant")

Craig Thomson, 79D Hallcraig Street, Airdrie, ML6 6AW ("the Respondent")

Tribunal Members:

Joel Conn (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that

Background

1. This is an application by the Applicant for an order for possession on termination of a short assured tenancy in terms of rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended ("the Procedure Rules"). The tenancy in question was said to be a Short Assured Tenancy of the Property by the Applicant to the Respondent commencing on 31 August 2012.

2. The application was dated 28 February 2022 and lodged with the Tribunal on 1 March 2022.

3. The application relied upon a Notice to Quit and notice in terms of section 33 of the Housing (Scotland) Act 1988, both dated 11 August 2021, providing the Respondent with notice (respectively) that the Applicant sought to terminate the Short Assured Tenancy and have the Respondent vacate, each by 28 February

2022. Evidence of service of the said notices by Sheriff Officer on 13 August 2021 was included with the application.

4. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon North Lanarkshire Council (and apparently intimated on them on or after 28 February 2022) was provided with the application.

The Hearing

5. The application had previously called for case management discussions ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting remotely by telephone conference call, on two occasions (23 May and 8 August 2022). On both occasions, as well as at the Hearing, we were addressed by the Applicant's agent, Vikki McGuire, branch manager of Jewel Homes and by the Respondent himself. The Hearing was similarly conducted by telephone conference call and commenced just after 10:00 on 7 November 2022.

6. The Notes for the CMDs are referred to for their contents but at the commencement of the Hearing we confirmed the following issues arising from them:
   a. The Respondent maintained his defence that the Tenancy Agreement relied upon by the Applicant was not signed by the Respondent, and the AT5 form relied upon by the Applicant had not been provided to the Respondent prior to commencement of the Tenancy;
   b. The Respondent maintained his defence on reasonableness (based on his financial circumstances, ill-health, the suitability of the Property for his needs, and his inability to obtain alternative accommodation to date);
   c. The Respondent had not yet been rehoused and wished to continue with his defence. The Respondent confirmed that he was frequently in contact with the Housing department and was on a waiting list, but was still to be rehoused;
   d. The Respondent had not obtained an agent to represent him. On this the Respondent confirmed:
      i. that Shelter had lacked capacity to represent him, though had advised him that he would not be wise to move out voluntarily (as it could adversely affect his housing application);
      ii. He had contacted various CABs and they had all lacked capacity;
      iii. He had contacted an MSP who was attempting to have his housing application prioritised; and
      iv. Citizens Advice Bureau in Airdrie (CABIA) had said they could represent him, but then were unable to. He did refer to numerous calls with them during which they had been helpful in providing some advice; and
   e. The Applicant and Respondent had failed to come to an agreement on any settlement of the matter. (To this extent, the Applicant's agent restated at the start of the Hearing a proposal previously made. The Respondent confirmed it was rejected.)

7. There were various early difficulties during the Hearing with the Respondent being able to hear what was said. (He attributed that in part to noise from nearby construction, and possibly from tinnitus from which he was currently suffering.) Commencement of evidence was delayed to allow him to redial and he appeared to have useable line quality by time witnesses were heard (though at times he requested comments to be repeated).

8. As for the Applicant, when we then sought to proceed with witness evidence it became clear that the Applicant's agent had not arranged the Applicant or his wife (being, along with the agent, the three witnesses previously discussed) to be available. We adjourned briefly, at which time the Applicant dialled in ready to give evidence but his wife, Lesley Miller, was not available. The Applicant's agent did not seek any adjournment and proceeded on the basis of the Applicant's evidence alone (as she then decided not to provide any further evidence herself). The Respondent then proceeded to give evidence as his only witness.

9. The evidence from the two witnesses is reviewed below. In regard to procedural matters arising we heard from the Respondent on his own behalf, primarily taking him through the contents of the Notes of the two CMDs and confirming he still adopted the comments in evidence that he had given at those times. He provided some points of expansion during which he stated that he had, around a month previously, located documents from around 2012 which included samples of his handwriting. This led to us requiring to consider a motion for an adjournment by the Applicant.

10. The context was that samples of handwriting had originally been required to be lodged with the Tribunal by 13 June 2022 in terms of a Notice of Direction. On that date, the Respondent had provided a letter with "a copy of my current signature" and saying that he would "try and get a copy of my signature from 2012 within the next five days". Nothing further was lodged. Then at the continued CMD of 8 August 2022 we noted the Respondent stated:

> *that he had no documents from 10 years ago. In regard to current samples, he said that he had: no driving licence; no passport; no bank cards or bank passbook; and no membership cards, etc. with a sample of his signature. The Respondent insisted that he attended to all matters entirely in cash (including any tax returns in respect of his business). He said that he had applied for a driving licence more than two months ago but it had still not arrived. The Respondent said that he had looked into the costs of obtaining a handwriting expert's report but could not afford it.*

Further, both parties agreed at the conclusion of that CMD that "they did not anticipate lodging any further documentation and that neither had any matters that would merit a further Notice of Direction".

11. In regard to his motion the Respondent explained that around a month ago he was looking through old papers and found a couple of old cheques (that had been returned by his bank) and copies of tax documentation that his accountant had sent to him. (During the Hearing he was unable to give much detail as to the documents as he said that they were stored at a friend's house.) The documents apparently had his signature from the time but, when he found them, he had

assumed he could not lodge them so had not done so nor contacted the Tribunal about them. At our prompting as to whether he sought a motion to adjourn to lodge these late documents, the Respondent made this motion, along with stating that he believed a friend may be able to fund a report from a handwriting expert.

12. The Applicant's agent objected to the motion to adjourn due to the further delay it would occasion. We concluded hearing the Respondent's evidence on the matters already lodged, and then adjourned briefly to consider the motion. We then refused the motion on the grounds that it was coming too late, in particular long after: the deadline in the Notice of Direction, the CMD of 8 August 2022, and the date when the documents were said to have been uncovered. In consideration of Procedure Rule 2 and the "overriding objective" we were not willing to see further delay in the matter.

13. After declining the Respondent's motion we heard brief submissions. No order for expenses was sought.

Witness evidence heard

The Applicant

14. The Applicant gave evidence that he wanted to sell the Property to "recover some of what I have lost" as he was "approaching 24 months with no rent". (We noted, however, that the documents previously lodged on his behalf showed that arrears started on 30 April 2021.) He conceded that under the current market conditions, the Property may not sell and, if so, he may relet but if he obtained vacant possession he would first be placing the Property on the market for sale.

15. In regard to the effects of non-payment of arrears, he described them as "massive". He required to cover mortgage payments, which were on a Capital & Interest basis, and which had increased to £444 per month with the recent further Bank of England base rate rise likely to make the mortgage rise further. On cross-examination, he said the payments were around £400 to £420 per month when he first bought, and had been £396 per month for a time recently before the recent increases. He said that the purchase had been a long-term investment, and that even when there was a margin of £100 to £120 between mortgage and rent, the Property "still costs money" due to other costs such as landlord insurance and maintenance.

16. In regard to additional costs specifically arising from the Respondent, he gave evidence on matters not previous raised (related to alleged anti-social issues, the condition of the Property, lack of access, and furniture allegedly dumped behind the block) which had incurred additional costs he required to attend to (at least in regard to clearing the dumped furniture which the local authority had said the Respondent had left).

17. He said that the issues with the Respondent at this Property had been "the worst experience with any" of his properties. He variously said that the cost to him was

around £10,000 or £20,000 so far. He was pressed on this by the Respondent in cross-examination and explained that he was basing his figure on two years of mortgage outgoings and other costs (of around £450 per month), with two years of no rent income (of a loss of around £450 per month). (He was not challenged on this apparent double-counting or the time period.)

18. In regard to the initiation of the Tenancy, the Applicant said that the Respondent had been a tenant of his at another property in Sunnyside Road, Coatbridge. He said that at a "bash at a guess" the Respondent had been a tenant there "just under a one year" prior to August 2012.

19. He said that he and his wife had met with Respondent at the Property on 30 August 2012. At the meeting, the AT5 (dated 29 August 2012) was handed to the Respondent and the Tenancy Agreement signed by the parties, with Lesley Miller (the Respondent's wife) witnessing both signatures. The AT5 and the Tenancy Agreement lodged by him in the Application were the documents from the meeting.

20. He said that at August 2012 he had a portfolio of around 40 properties. As the portfolio was he and his wife's main income, it was not unusual for his wife to attend with him at properties at the start of tenancies. For other properties, sometimes his brother would accompany him and be the witness.

21. He said he would always have had a lease signed at the outset before providing the keys to a tenant, as otherwise he would not obtain insurance cover in the event of a problem. In drafting the documentation, he said that he would prepare and print the leases and AT5 in Word, have them signed, and then save the lease onto his computer (specifically in *Dropbox*). He said that he may then keep the AT5s on his computer or in hard copy. He said that he had never been asked by the Respondent for a copy of this Tenancy Agreement but would have been able to have given him a copy if he had ever requested it, as it had been stored on his computer along with all his other leases.

22. He said that at 2012 he used the style of Tenancy Agreement lodged in this case, which he had downloaded off the internet. From 2013 he had started to use Jewel Homes who had a different lease style. Under cross-examination he clarified that he had continued to manage the Property himself, only using Jewel Homes until the Notice to Quit, etc. and this application. He said that this Property and some others were not passed to Jewel Homes and he managed them himself. He explained that from 2013, he only passed new properties and vacant properties requiring new leases to Jewel Homes.

23. He accepted that the initial meeting at the Property with the Respondent would likely have been only five minutes, during which time he would "take meter readings and all that to set him up as a new tenant". Under cross-examination he believed that the meters were credit meters (which the Respondent disputed, saying they were pre-payment meters and had always been).

24. He gave evidence about offering the Respondent a one-bedroom or studio property that would have been more affordable to him. He said that the Property was a two-bedroom flat and the rent would have been higher than the smaller properties he offered, and further the Property would never qualify for full Housing Benefit for the Respondent as a single person. The Applicant said that if the Respondent had accepted this, he would have been able to sell the Property. He said that there were "no reason for him not to take" up the offer of alternative accommodation, but that the Respondent had not. The Applicant also described contact with the Respondent where payments were offered (sometimes on the basis that the Respondent said he was carrying out a contract and expected to be paid) but the payments were not then made. Under cross-examination, he said he did not believe he had been in touch with the Respondent direct for around a year (which the Respondent disputed, saying they had been in contact in February 2022 about the alternative accommodation).

25. The Applicant said that he was aware the Respondent had sought advice from a CAB as he had been called by someone from a CAB. At one point, on believing that the Respondent had left, he had sent his handyman Ryan Convery to the Property. He then found out that the Respondent remained in occupation. In regard to access, he said he did not believe there had been access in two years, and that no maintenance or safety checks had been possible. He said that Jewel Homes and Mr Convery had both failed to obtain access, and that he believed there were repair issues that needed dealt with.

The Respondent

26. We took the Respondent through the points he had previously addressed us on at the two CMDs. He confirmed the following from the CMD Notes (with clarifications, updates, and expansions included):
    a. The Respondent was a sole trader engineer, specialising in pumps. His business had been failing and he could no longer support himself. He currently obtained about one contract a week, which was just enough to feed himself but not enough to pay rent or his arrears.
    b. He had been applying for full time work but had not yet been successful.
    c. He had been applying for unemployment benefits for the first time in his working career. (He said he was in his 60s and had been working since he was 15.) The benefits application had commenced in May and was still ongoing.
    d. He had applied for Housing Benefit in early 2022 but, as part of the application, required to say what was his Tenancy Agreement. As he did not accept that the Tenancy Agreement obtained by the Council (being that relied upon by the Applicant in this application) was his lease, and lacking any other lease, he did not think he could advance his application so had not pursued the matter. (In his evidence, the Applicant suggested that the Respondent had been receiving Housing Benefit and not passing it on. The Respondent denied this in his evidence.)
    e. He thinks he has had Covid which has left him feeling exhausted.
    f. He has developed tinnitus.

g. The Property was very conveniently placed for his needs, being close to a train station for travel to places of work, as well as being well-placed for shops and his GP.
h. The house was not specially adapted for him or anyone he cared for. He lived alone.
i. He had been offered another property from the Applicant at below £300 per month but Shelter and the CAB had doubted that such a cheap property was available and advised him to be cautious about accepting it. He had not accepted the offer from the Applicant.

27. Further, in regard to the Tenancy Agreement, he confirmed the following from the CMD Notes (with clarifications, updates, and expansions included):
a. He disputed the Tenancy Agreement as he said he had not signed any agreement at the start of the Tenancy and not received any papers at the meeting to obtain keys (including not receiving the AT5 also lodged with the application).
b. He recalled only a brief "five minute" initial meeting at the Property with someone (he recalled the name may have been "Ryan", which during the evidence seemed to be clarified to be Ryan Convery, the Applicant's handyman) where he paid over rent and was left in possession of the Property. He said Ms Miller was not in attendance and had no recollection of ever meeting her.
c. He had no recollection of being told that the Tenancy was for six months or that it was said to be a Short Assured Tenancy. He said that he had never rented before and was not aware, until very recently before the first CMD of May 2022, that a Tenancy Agreement would need to have been signed by him.
d. He was adamant that he had never been a tenant of the Respondent at Sunnyside Road, Coatbridge. He said that he had lived in his mother's house until 2012.
e. In regard to the Tenancy Agreement lodged with the application - which he said he first saw, via the local authority, in March 2022 – the Respondent said it did not bear his signature and he did not recognise the name of the witness to his alleged signature. (The signature in his letter of 13 June 2022 did – to our eyes – look materially different to the signature in the Tenancy Agreement but no evidence was available to us as to the Respondent's usual signature in 2012, nor supporting what his usual signature is in 2022.)
f. The Respondent did accept that the rent was £450/month and that he moved in around 31 August 2012, both as per the Tenancy Agreement relied upon by the Applicant. The Respondent however recalled it being a few days prior to 31 August when he moved in.
g. In regard to the remainder of the Tenancy Agreement relied upon, the Respondent had not read it in detail (despite having been prompted by us at the second CMD that he should do so). He thus could not comment on any differences between its terms and what he believed the terms of his tenancy to be. He said that he was dyslexic and, in order to consider it in detail, he would need a solicitor to read it through and discuss with him.

28. On other matters, the Respondent said that the Applicant had made no attempt to do repairs or gas safety checks, and the Property had no working smoke detectors. He thus disputed the Applicant was incurring any maintenance costs. In regard to costs to uplift furniture from behind the block, the Respondent disputed that he was responsible for that. (The Applicant's evidence was not that he said that the Respondent was responsible, but that he had instructed the uplift as the Council had told him to do so as the Council said that the Respondent had been witnessed by other occupiers leaving the items).

Findings in Fact

29. On 30 August 2012, the Applicant let the Property to the Respondent by lease with a start date of 31 August 2012 until 28 February 2013 ("the Tenancy"). This was referred to in the Tenancy Agreement as "31/02/2013 or the date falling 6 months after the entry date, which ever is the later" (*sic*).

30. The Tenancy was a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988 further to the Applicant issuing the Respondent with a notice under section 32 of the 1988 Act (an "AT5") on 30 August 2012, prior to commencement of the Tenancy.

31. On 11 August 2021, the Applicant's agent drafted a Notice to Quit in correct form addressed to the Respondent, giving the Respondent notice that the Applicant wished him to quit the Property by 28 February 2022.

32. On 11 August 2021, the Applicant's letting agent drafted a Section 33 Notice under the 1988 Act addressed to the Respondent, giving the Respondent notice that the Applicant required possession of the Property by 28 February 2022.

33. 28 February 2022 is an ish date of the Tenancy.

34. On 13 August 2021, a Sheriff Officer instructed by the Applicant's agent competently served each of the notices upon the Respondent. The Respondent was thus provided with sufficient notice of the Applicant's intention that the Tenancy was to terminate on 28 February 2022.

35. On 1 March 2022, the notice period under the notices having expired, the Applicant raised proceedings for an order for possession with the Tribunal, under Rule 66, the grounds of which being that the Tenancy had reached its ish; that tacit relocation was not operating; that no further contractual tenancy was in existence; that notice had been provided that the Applicant required possession of the Property all in terms of section 33 of the 1988 Act; and that it was reasonable to make the order.

36. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon North Lanarkshire Council on or around 28 February 2022 on the Applicant's behalf.

37. On 5 April 2022, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondent.

38. The Applicant seeks to sell the Property to raise money in consideration that he has required to fund mortgage payments and other costs on the Property during the period that the Respondent has failed to make payment of rent.

39. Under the Tenancy Agreement, the Respondent is due to pay rent of £450 per month in advance on the last day of each month.

40. The Respondent last paid rent on or around 31 March 2021.

41. The Applicant's liability for mortgage payments has increased due to increases in interest rates, and is currently around £444 per month, with a further increase expected next month. It has not been lower than around £390 per month since March 2020.

42. The Applicant has incurred further liabilities in regard to the Property, such as insurance payments and clearance costs, since 31 March 2021.

43. The Applicant owns a substantial portfolio of rental properties.

44. The Respondent lives alone at the Property.

45. The Property is a two bedroom flat.

46. The Applicant made offers of alternative accommodation, at rental less than £450 per month, to the Respondent but the Respondent declined to accept such alternative accommodation, in concern as to the quality of such accommodation.

47. The Respondent is a self-employed pump engineer who is currently working only around one job a week, due to lack of available contracts.

48. The Respondent has sought alternative employment during 2022 but has been unable to obtain suitable employment.

49. The Respondent has sought to be rehoused from North Lanarkshire Council but has not yet received an offer of rehousing.

50. The Property is not specially adapted to any needs of the Respondent.

51. The Property is conveniently located for the Respondent's transport, retail and medical needs.

52. The Respondent currently suffers from exhaustion which he attributes to previously having Covid-19.

53. The Respondent currently suffers from tinnitus.

54. The Respondent has dyslexia.

Reasons for Decision

55. The application was in terms of rule 66, being an order for possession upon termination of a short-assured tenancy. We were satisfied on the basis of the application and supporting papers that the necessary notices had been served with sufficient notice (in terms of the temporary amendment of the 1988 Act). The Respondent did extend a dispute to the notices but they related not to the terms or dates of the Notices, but the underlying lease and service of the AT5.

56. Simply the Respondent's evidence was that the Tenancy Agreement was a forgery. The witnesses were in agreement that there would have been a short meeting at the Property on or around 30 August 2012 when the keys were handed over (though the Respondent stated that he thought it may have been 29 August 2012). They differed on other details as we set out above. On the balance of probabilities, we accepted the evidence of the Applicant that both the Tenancy Agreement lodged was genuine and contemporaneous with the commencement of the Tenancy, and that the AT5 was genuine and provided to the Respondent prior to the commencement.

57. We acknowledge the apparent inconsistencies on both sides, and that we were making a decision without the benefit of material writing samples or expert evidence or further evidence that may have shed light on some of the apparent inconsistencies. Nonetheless, we are dealing with events over 10 years ago and we have made the decision – principally informed by the "overriding objective" - that it was appropriate to make progress based on the documentation held and witness evidence heard at this time.

58. On the basis of that evidence, we accept the Applicant's evidence as more likely. The Applicant was not a new landlord, and we accept that his process would be that keys would not be provided without a written lease.

59. We thus require, in terms of the 1988 Act as temporarily amended, to consider "that it is reasonable to make an order for possession". On this, we found the arguments significantly balanced in favour of the Applicant. The Respondent has not paid rent since March 2021 and has no proposals for payment at this time (despite his hopes of future employment). We accepted the Applicant's evidence that the costs of the mortgage are rising and, even if rent was being paid, there would be little to no margin between the rent and the Applicant's costs. His desire to sell is valid, even considering that he has a substantial portfolio of properties.

60. We acknowledge that the Respondent has some health issues. He is understandably keen not to be evicted but he is also keen to be rehoused. There is no material reason that this Tenancy must be preserved or his occupation at this Property maintained specifically. (We further note that there is good reason

to think that his application is unlikely to be prioritised until an order for eviction is granted.) We note that Respondent's view that he could not apply for Housing Benefit on the basis that he was insistent that the Tenancy Agreement was not valid, but his failure to obtain Housing Benefit, and the undue length of time his applications for other benefits have taken to date, do not weigh in his favour. We did not doubt that the Respondent was finding his search for a council house to be protracted. We noted, however, that he was narrowing his search by seeking only public housing and had declined to consider the Applicant's alternative accommodation. This also does not weigh in his favour.

61. In the circumstances before us, the Respondent has had over fifteen months' notice of the Applicant's intention and has eighteen months' of unpaid rent. We were satisfied that it was reasonable to grant the application.

62. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. We were thus satisfied to grant an order for possession.

Decision

63. In all the circumstances, we make the decision to grant an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988.

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.

7 November 2022

_____ _____

Legal Member: Joel Conn **Date**