



**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”) and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)**

**Chamber Ref: FTS/HPC/EV/23/3381**

**Re: Property at 2 Mosesfield Street, Glasgow, G21 3AB (“the Property”)**

**Parties:**

**Mrs Jacqueline Colyer, 100 Milton Road, Sutton Courtenay, Abingdon, OX14 4BT (“the Applicant”)**

**Mr Mutende Mwafulirwa, Mrs Angeline Mwafulirwa, 2 Mosesfield Street, Glasgow, G21 3AB; 2 Mosesfield Street, Glasgow, G21 3AB (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for the order for possession should be granted.**

**Background**

1. By application received on 26 September 2023, the Applicant sought an order under Section 33 of the Housing (Scotland) Act 1988 (“the Act”) for possession of the Property on termination of a Short Assured Tenancy. The application was made in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). Supporting documentation was submitted with the application, including a copy of the Tenancy Agreement, AT5, Notice to Quit, Section 33 Notice, Section 11 Notice to the local authority and an Affidavit from the Applicant explaining the background circumstances to the application.

2. On 13 October 2023, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance in respect of the application in terms of Rule 9 of the Regulations.
3. A Case Management Discussion (“CMD”) was fixed for 12 January 2024 at 10am. The application and details of the CMD fixed were served on the Respondent by Sheriff Officer on 17 November 2023. In terms of said notification, the Respondent was given an opportunity to lodge written representations by 7 December 2023. No representations were lodged prior to the CMD.

### **Case Management Discussion**

4. The CMD took place on 12 January 2024 at 10am by telephone conference call. The CMD was attended on behalf of the Applicant by Mr Calvin Gordon, of Thorntons Law LLP, the Applicant’s solicitor and by both Respondents who joined on separate lines and both contributed to the discussions.
5. Following introductions and initial comments by the Legal Member, the parties were advised by the Legal Member that the Tribunal requires to be satisfied not only that the ground for eviction is met, namely termination of a Short Assured Tenancy at its ish in terms of Section 33 of the Act, but also that it is reasonable in the circumstances for the Tribunal to grant the eviction order sought.
6. The Respondents were asked to confirm their position in respect of the application. Mrs Mwafulirwa, on behalf of both Respondents, confirmed that they understand the position of the Applicant who owns the Property and wishes to recover possession from them. However, it is difficult for them as they are a family of five and require quite a big house. They have previously been in contact with their local authority, Glasgow City Council, but the Council was unable to confirm when an alternative property would be available to them. They have resided in the Property for several years and have three children residing with them.
7. Mr Gordon was then asked to address the application on behalf of the Applicant. He explained that this is a Short Assured Tenancy which the Respondents have occupied for 7 years, since 1 December 2016. Notice was served under Section 33 during 2022 and a previous eviction application was opposed by the Respondents and an eviction order refused following an Evidential Hearing in March 2023. Mr Gordon explained that the Applicant’s circumstances have changed since then and that this fresh eviction application was lodged, again under Section 33, in September 2023, but on the basis of different background circumstances. Mr Gordon referred to the Affidavit from the Applicant lodged in support of the application which explains the change in the Applicant’s personal and family circumstances and the reasons the Applicant now requires to recover possession of the Property, essentially that the Applicant and her husband require to live in the Property themselves when they return to live in Scotland from England in the coming months.

8. Mr Gordon stated that the Applicant has already retired and that her husband is due to retire in September, having turned 65 last September. He also suffered a stroke 6 years ago. They currently live in Oxfordshire but it has always been the plan to move back up to Scotland, on their retirement. They have a daughter who has a partner and young child. They work and live in the London area and it is intended that they will move into the Oxfordshire property to live in as their family home when the Applicant and her husband move out. Mr Gordon confirmed that the Respondents have lived in the Property for over 7 years and have known for some time that the Applicant needs to Property back. If the Tribunal were to grant an order today, Mr Gordon pointed out that the order cannot be enforced straight away, until at least 1 April 2024 when the Cost of Living legislation protection comes to an end. He is aware that the Respondents are facing the same difficulty as many tenants with the local authorities where they will not do anything as regards providing alternative accommodation to the Respondents until a Tribunal eviction order is granted. He also stated that there would be no difficulties for the Respondents as far as their homeless application, given the ground for eviction being used here which is nothing to do with any fault on the part of the Respondents, but is rather due to the Applicant's change in circumstances. Mr Gordon submitted that this tenancy is coming to its natural end and that Glasgow City Council are obligated to provide alternative accommodation to the Respondents, given their duties under the homelessness legislation. In response to questions from the Tribunal Members, It was stated that the Applicant does not have any other properties that she lets out. Mr Gordon does not think that the Applicant has capital resources such that she and her husband could buy an alternative property for themselves to live in in Scotland. His understanding is that the Property in Oxfordshire is not being sold or transferred formally to the Applicant's daughter, so there will not be capital available from that. The Applicant did previously reside in the Property after purchasing it in 2015, before moving down to England due to her husband's work. As to the Respondents' circumstances, Mr Gordon stated that it was unfortunate that they required to move, given that they have 3 children, but he commented that the children are older children and reiterated that the local authority owes duties to them in terms of homelessness. He submitted that the balance of reasonableness tips towards the Applicant here, particularly as the Property was originally let out as a Short Assured Tenancy after all. Mr Gordon was asked about the possibility of an order being granted but with a longer delay before it could be implemented, such as July 2024, which would allow the Respondents' children to complete the current school year without disruption. Mr Gordon said that the Applicant is keen to recover the Property as soon as possible, given her circumstances and the length of time she has been trying to recover the Property, but conceded that there may not be a huge urgency for the Applicant, given that her husband is not due to retire until September and is aware that the earliest any order could be implemented is April.
9. The Respondents confirmed that two of their children are older and at university, one in Glasgow and the other commuting to Edinburgh. Their youngest child is 14 and attends a local secondary school where they are in 3<sup>rd</sup> year. The secondary school is 10 minutes walk from the Property and their child has friends at the same school. They confirmed that it would be helpful if they

could have a bit more time to avoid disruption during the school term as they were unable to get any certainty from Glasgow City Council that they would be re-housed in the same area. They also confirmed that they have looked at other private rented properties but that the rent is double what they are currently paying and they cannot afford it. They confirmed that they are aware that they require to move on, given their landlord's circumstances, and, if they could be given a bit more time to allow their housing application to be progressed, this would be their preferred option, rather than having the Tribunal proceedings continued on further for an Evidential Hearing on the question of reasonableness. They are not opposed to an eviction order being granted on this basis.

10. The Tribunal adjourned the proceedings briefly in order to deliberate in private and, on re-convening, the Legal Member advised that the Tribunal had decided to grant the eviction order sought, but with an extended period before the order could be implemented, until 30 June 2024. It was explained that the detailed written Decision would be issued to parties shortly and the Respondents were advised to provide this to the local authority as soon as possible so that they are aware of the position. The Respondents were also informed that, should alternative accommodation be found for them sooner than this and, if they were in a position to do so, they could vacate earlier than the 30 June timescale. The parties were thanked for their attendance and the CMD was brought to a close.

### **Findings in Fact**

1. The Applicant is the owner and landlord of the Property.
2. The Respondents are the joint tenants by virtue of a Short Assured Tenancy which commenced on 1 December 2016.
3. The Applicant ended the contractual tenancy by serving a Notice to Quit and Section 33 Notice on 31 March 2022, specifying the end of the notice period (at least 2 months) as 1 July 2022, an ish date in terms of the lease. Both notices were in the correct form, provided sufficient notice and were served validly on the Respondent by Recorded Delivery/'signed for' post on 1 April 2022.
4. The Respondent has remained in possession of the Property following expiry of the notice period.
5. This application was lodged with the Tribunal on 26 September 2023, following expiry of the notice period.
6. The Respondents participated in the CMD and did not contest the application.

### **Reasons for Decision**

1. The Tribunal was satisfied that the Respondent understood the position and was not wishing to contest the eviction application, either in terms of the

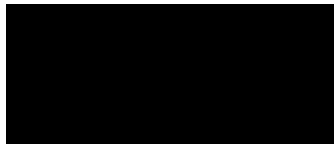
technical aspects of the application/notices served, nor in terms of reasonableness, provided they were given some additional time to progress their housing application with the local authority.

2. The Tribunal was satisfied that pre-action requirements including the service of the Notice to Quit and Section 33 Notice in terms of the 1988 Act had been properly and timeously carried out by the Applicant prior to the lodging of the Tribunal application. The Tribunal noted that, in terms of Section 33(5) of the 1988 Act, the usual 6 month validity period of notices as far as thereafter raising Tribunal proceedings does not apply in terms of eviction applications under Section 33.
3. Section 33(1) of the Act states that an order for possession shall be granted by the Tribunal if satisfied that the short assured tenancy has reached its finish; that tacit relocation is not operating; that the landlord has given to the tenant notice stating that he requires possession of the house; and that it is reasonable to make an order for possession. The Tribunal was satisfied that all requirements of Section 33(1) had been met.
4. As to reasonableness, the Tribunal considered the oral submissions at the CMD of both Mr Gordon on behalf of the Applicant and of both Respondents and also had regard to the supporting documentation lodged with the application, particularly the terms of the Affidavit of the Applicant which explains the background circumstances to this application and the Applicant's need to recover the Property in the coming months. The Tribunal took into account the circumstances of both parties in reaching their decision. The Tribunal was persuaded that the Applicant had legitimate reasons for requiring possession of the Property back for she and her husband to reside in themselves following her husband's retirement in September 2024 and their return to Scotland thereafter, and that she did not have other viable options available to her. The Respondents understood those reasons and accepted that they had been aware of the Applicant's position for some time. They appeared to be resigned to the fact that they would require to move from the Property and did not wish to oppose in these circumstances. Equally, however, they had explained their own family and other circumstances and their concerns at not having any definite offers or timescales from their local authority as to when they would be provided with alternative accommodation. One of their main concerns was to prevent disruption to their youngest child's education if they were not re-housed near her secondary school and the child required to move schools during the current school year. The local authority are aware of the Respondent's housing needs, being a family of five. The Tribunal noted that the Respondents had also looked at private lets but that, with current rents, this was not affordable for them. The Tribunal was also aware that, if granting the order today, that in terms of the Cost of Living (Tenant Protection) (Scotland) Act 2022, there would be a delay until the order could be enforced until 31 March 2024. However, in the circumstances of this case, the Tribunal did not consider that this gave sufficient time to the Respondents to secure suitable alternative accommodation. Given that the Respondents had resided in the Property for over 7 years and that the Tribunal was not persuaded that the Applicant required possession of the Property as a matter of urgency, the Tribunal considered it appropriate to grant

the order sought but on the basis of an extension of the period over which the order would not be enforceable from 31 March 2024 until 30 June 2024, namely after the current school year has ended. In all of the circumstances, the Tribunal considered that the likely impact on the Respondents' family of granting the eviction order was outweighed by the impact on the Applicant and her family members were the order not to be granted. The Tribunal was therefore satisfied that it was reasonable to grant the order sought, subject to the stated delay in implementation of the eviction 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.**



**Legal Member/Chair**

**12 January 2024**

**Date**