



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 of the Housing (Scotland) Act 1988**

**Chamber Ref: FTS/HPC/EV/23/2478**

**Re: Property at Flat 0/1, 128 Ledard Road, Glasgow, G42 9RA (“the Property”)**

**Parties:**

**Miss Hamida Ashraf, 56 Alder Gate, Cambuslang, Glasgow, G72 7ZF (“the Applicant”)**

**Mr Arthur McGready, Flat 0/1, 128 Ledard Road, Glasgow, G42 9RA (“the Respondent”)**

**Tribunal Members:**

**Gabrielle Miller (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision (in absence of the Respondent)**

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

**Background**

1. An application was received by the Housing and Property Chamber dated 21<sup>st</sup> July 2023. The application was submitted under Rule 65 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the ground 1 of the Housing (Scotland)(Act) 1988 (“the Act”), namely that the Applicant wishes to live in the Property.
2. On 24<sup>th</sup> October 2023, all parties were written to with the date for the Case Management Discussion (“CMD”) of 1<sup>st</sup> December 2023 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 14<sup>th</sup> November 2023.

3. On 25<sup>th</sup> October 2023, sheriff officers served the letter with notice of the CMD date and documentation upon the Respondent by letterbox service. This was evidenced by Certificate of Intimation dated 25<sup>th</sup> October 2023.

### The Case Management Discussion

4. A CMD was held on 1<sup>st</sup> December 2023 at 2pm by teleconferencing. The Applicant was represented by Mr Nicholas Nimmo, solicitor, Raeside Chisholm. Mr Nimmo was the local agent for Clarity Legal. The Applicant was not present. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make any representations in advance of the CMD.
5. Mr Nimmo addressed the Tribunal on the lease not having the appropriate dates. The Tribunal was satisfied that as the lease was signed by both parties on 19<sup>th</sup> September 2013 that it was clear that the intention for the start of the lease was that dated. The word omission of the word September was clearly a mistake. The Tribunal also found that the reference to the lease ending on 19<sup>th</sup> March 2013 was a clear error. As referred to above, the lease was signed on 19<sup>th</sup> September 2013 so it would not be possible for the parties to enter into a lease which was to terminate in the past. This date should have read 19<sup>th</sup> March 2014 which was six months after the start of the lease.
6. Mr Nimmo referenced the affidavit signed by the Applicant before a Notary Public on 24<sup>th</sup> August 2023 which is contained within the papers. This affidavit confirmed the Applicant's position in that she wishes to return to live in the Property. She had moved out of the Property when she divorced. At that time she was under financial pressure. She moved in with her family. She is now no longer able to continue to live with her brother as his own family require more accommodation within their property. This means that she must return to live in the Property.
7. Mr Nimmo was not able to provide any information in terms of the Respondent as to his circumstances, correspondence between parties or any other circumstances which may be relevant to the Tribunal in assessing reasonableness. He was not instructed if there were any arrears on the Property. He did not know if the Respondent has any disabilities or if the Property had been adapted for him. The Tribunal allowed the CMD to be adjourned in order that Mr Nimmo contact his principal agent to find out this information. The principal agent was not able to be contacted as the whole office was on a training day. The Tribunal also noted that there was not an AT5 included in the paperwork. This will need to be submitted to the Tribunal. If it is not able to be located then a legal submission will need to be lodged to the validity of the application if there is no AT5. The CMD will be adjourned to allow this to be provided to the Tribunal. The Tribunal continued the CMD to a further date to allow the Applicant or her representative to provide a copy of the AT5 and information to the Tribunal in terms of reasonableness relating to the Respondent. A direction was issued.

8. On 24<sup>th</sup> January 2024 all parties were written to with the date for the Case Management Discussion (“CMD”) of 14<sup>th</sup> March 2024 at 10am by teleconferencing.
9. On 28<sup>th</sup> February 2024, the Applicant’s solicitor lodged a submission in response to the direction issued. The submission included a response to the direction issued clearly setting out that this is a contractual assured tenancy which has followed the procedure to allow an order to be granted. The submission also included an affidavit from the Applicant addressing her need to return to live in her own property again.

#### The continued CMD

10. The continued CMD was held on 14<sup>th</sup> March 2024 at 10am by teleconferencing. The Applicant was represented by Ms Eilidh Clark, trainee solicitor, Clarity Legal. The Applicant was also present. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make any representations in advance of the CMD.
11. The Tribunal was satisfied that the in-depth submission had addressed all of their concerns raised in the previous CMD. Neither Ms Clark nor the Applicant had anything further to submit. The Tribunal was content that it was appropriate to grant the application.

#### Findings and reason for decision

12. The parties entered into a contractual Assured Tenancy on 19<sup>th</sup> September 2013 for a 6 month period until 19<sup>th</sup> March 2014. The rent payments of £500 are due on the nineteenth day of each month.
13. Appropriate notices were given to terminate the tenancy by the Applicant to the Respondent.
14. The Applicant is living with her brother and his family. This is causing undue strain on their relationship. The Applicant’s brother’s house is overcrowded due to the Applicant living there. The Applicant wishes to return to live in her property.
15. There were no issues of reasonableness preventing the application being granted.

#### Decision

16. The Tribunal found that ground 1 has been established and granted an order in favour of the Applicant. The Applicant is entitled to an Order for recovery of possession.

## 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.

# G Miller

14<sup>th</sup> March 2024

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Legal Member/Chair

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Date