



**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 Rules”)**

**Chamber Ref: FTS/HPC/EV/23/3180**

**Re: Property at 51 Victoria street, Kirkintilloch, Glasgow, G66 1LG (“the Property”)**

**Parties:**

**Mrs Gillian Tait, 6 Corn Mill Road, Woodilee, Lenzie, Glasgow, G66 3TL (“the Applicant”)**

**Mr Martin Gerrard Currie, 51 Victoria street, Kirkintilloch, Glasgow, G66 1LG (“the Respondent”)**

**Tribunal Members:**

**Martin McAllister (Legal Member) and Jane Heppenstall (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order of possession of the Property be made and that the date of possession be postponed to 15 July 2024.**

**Background**

- 1. This was a Hearing held in Glasgow Tribunal Centre on 27 March 2024 concerning an application made by the Applicant for an order of possession of the Property in terms of Rule 66 of the Rules.**
- 2. A case management discussion had been held on 15 December 2023.**

**Attendance**

- 3. The Applicant was not present but was represented by Ms Sharon Cooke, Coda Estates Ltd, letting agents. The Respondent was present and was represented by Mr Raymond Heath of East Dunbartonshire CAB.**

4. The legal member explained the purpose of the Hearing.

#### **Preliminary Matters**

5. It was noted that the Notice to Quit and notice required under Section 33 of the 1988 Act (“Section 33 Notice”) both dated 21 June 2023 had been served on the Respondent on 27 June 2023 and that these demonstrated that the Applicant had required the Respondent to remove himself by 5 September 2023. At the case management discussion, Mr Heath accepted that the necessary ground of eviction under section 33 of the 1988 Act had been met and he said that he had no issue with the Notice to Quit or the Section 33 Notice. Mr Heath confirmed that this was still his position.
6. Mr Heath said that, since the case management discussion, a homelessness application had been made to the local authority and that it had accepted the application notwithstanding that no order had been made by the Tribunal. He said that this was quite unusual and that the Council recognised the particular needs of the Respondent. Mr Heath said that East Dunbartonshire covers a large area and that homeless individuals were accommodated wherever there was available housing. The Council had accepted that, because of the Respondent’s health issues, he should ideally be housed in the Kirkintilloch area.
7. Ms Cooke said that neither Coda Estates or the Applicant want to cause undue stress to the Applicant. She said that the Applicant would be flexible as to timing if the decree of possession were to be granted. Ms Cooke said, however, that the Applicant wants the Respondent out of the Property so that she can sell it.
8. No written representations had been submitted by either party prior to the Hearing but the Applicant had submitted a letter dated 13 March 2024. This will be dealt with in due course.
9. Mr Currie said that he realised that any Decision on the application would be accessible to the public on the Tribunal’s website. He said that he had no issue with information about his health being included in the written Decision.

#### **10. Findings in Fact**

- 9.1 The Applicant is the owner of the Property.
- 9.2 The Applicant and Respondent entered into a short assured tenancy agreement in respect of the Property on 5 September 2017.
- 9.3 The tenancy commenced on 5 September 2017.
- 9.4 The term of the tenancy was for a period of six months and thereafter

- on a month to month basis until brought to an end.
- 9.5A Notice to Quit and notice required under section 33 of the 1988 Act was served on the Respondent on 27 June 2023 which required him to remove from the Property on 5 September 2023.
- 9.6A notice under section 11 of the Homelessness etc. (Scotland) Act 2003 was served on East Dunbartonshire Council, the relevant local authority.
- 9.7 The Applicant wants to sell the Property.
- 9.8 The Respondent has health issues and is supported in the community by health professionals.
- 9.9 The Respondent continues to reside in the Property.

## 10 Findings in Fact and Law

- 10.1 The Notice to Quit required the Respondent to remove himself on 5 September 2023, the anniversary of the commencement of the tenancy and therefore at an ish date.
- 10.2 Tacit relocation is not operating.
- 10.3 It is reasonable to grant the order of possession.
- 10.4 It is appropriate to postpone the date of possession to 15 July 2024.

## 11 The Law

### ***Housing (Scotland) Act 1988***

#### ***Section 33***

##### ***Recovery of possession on termination of a short assured tenancy.***

*(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied—*

*(a) that the short assured tenancy has reached its finish;*

*(b) that tacit relocation is not operating; ...*

*(c). . . . .*

*(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and*

*(e) that it is reasonable to make an order for possession.*

*(2) The period of notice to be given under subsection (1) (d) above shall be—*

*(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;*

*(ii) in any other case, two months.*

*(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.*

*(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.*

*(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.*

## **Section 20**

### **Extended discretion of First-tier Tribunal in possession claims**

*(1) The First-tier Tribunal may adjourn for such period or periods as the Tribunal thinks fit, proceedings for possession of a house let on an assured tenancy.*

*(2) On the making of an order for possession of a house let on an assured tenancy or at any time before the execution of such an order, the First-tier Tribunal, subject to subsection (6) below (repealed), may—*

*(a) sist or suspend execution of the order; or*

*(b) postpone the date of possession,*

*for such period or periods as the Tribunal thinks fit.*

*(3) On any such adjournment as is referred to in subsection (1) above or on any such sist, suspension or postponement as is referred to in subsection (2) above, the First-tier Tribunal, unless the Tribunal considers that to do so would cause exceptional hardship to the tenant or would otherwise be unreasonable, shall impose conditions with regard to payment by the tenant of arrears of rent (if any) and rent or payments in respect of occupation after the termination of the tenancy and may impose such other conditions as the Tribunal thinks fit.*

## **Reasons**

**12** Parties agreed that an appropriate notice to quit had been served and that the Respondent still occupies the Property.

**13** The tribunal had before it copies of the Notice to Quit, Section 33 Notice and Section 11 notice served on the local authority. Mr Heath indicated that he had no issue with any of the paperwork served on the Respondent.

**14** The Respondent was candid in stating that he has a mental illness and that he is subject to a community based Compulsory Treatment Order. He said that he has

a history of admission to hospital because of his illness and that he was discharged from his last admission in November 2023.

- 15** The tribunal had before it letters from the Respondent's mental health officer and from his mental health officer dated respectively 23 and 30 November 2023. These confirm that Mr Currie is a vulnerable individual. The letter from the mental health officer states that the location of the Property enables the Respondent to maintain engagement with the community mental health team. The letter from Mr Currie's psychiatrist states that the uncertainty over where he may be living is causing him distress and potentially putting him at risk of relapse of his mental illness.
- 16** The letter submitted to the Tribunal by the Applicant and dated 13 March 2024 refers to a number of issues with the Respondent over a number of years. The letter states that the Applicant has found the tenancy to be stressful and that she wants to sell the Property so that she can purchase a property abroad. The letter lists a number of "incidents over the years" and reference is made to rent arrears, property damage, fire brigade attending the Property, neglect of a dog and threatening behaviour. The letter states that the Applicant has concerns about her aged parents who live in an upper flat in the same building as the Property.
- 17** The letter states that the Applicant does not want to see the Respondent "on the street" and that "hopefully the council and medical profession will provide the support" Mr Currie needs.
- 18** Mr Currie said that he accepted that the Applicant and Coda Estates would have concerns about his historic behaviour and incidents in the Property. He said that, in the past, there had been damage to the Property. He said that this had been caused by his psychotic illness. He said that he now has a new treatment plan which means that he receives monthly injections and that he considers that he is now more stable.
- 19** Mr Currie said that he finds the application for a possession order to be stressful. He said that the Applicant and Coda Estates had been supportive to him over the years but that he "feels it is perhaps time to move" from the Property.
- 20** Mr Currie said that he has no allocated social worker to assist him in his housing issues.
- 21** Ms Cooke confirmed that the matters referred to in the Applicant's letter were for a period prior to the Respondent's most recent admission to hospital and that there had been no matters of concern since the Respondent's discharge in November 2023. She confirmed that there were no rent arrears.

## **Submissions**

- 22** Ms Cooke said that, whilst the Applicant has had concerns in the past about the Respondent and her parents living in the same building as him, her principal reason for seeking an order of possession is because of changes in her life and her desire

to use the funds from the sale of the Property to invest in a property abroad.

- 23** Ms Cooke said that, if an order of possession were to be made, the Applicant would be content for it to be postponed to enable the Council time to make appropriate housing provision for the Respondent.
- 24** Mr Heath said that the Council have, quite unusually, accepted the Respondent's homelessness application without an order being issued by the Tribunal. He said that the Respondent wants to continue to reside in the Kirkintilloch area. He said that this would ensure support from his community mental health team and that the Council have, in accepting the application, confirmed that it would treat this issue as a priority. Mr Heath said that the difficulty is that one bedroomed properties are at a premium in Kirkintilloch and that, if an eviction order were made, this might mean that the Council has to house the Respondent in temporary accommodation which might be unsuitable because of its location. He said that, if the tribunal was minded to grant the order of possession, consideration be given to postponing it for a period such as three months.

### **Discussion and Determination**

- 25** The Respondent did not challenge that the ground of eviction under Section 33 of the Act was met. The tenancy had been brought to an end by service of the Notice to Quit.
- 26** Prior to amendment to the 1988 Act, the Tribunal would have been bound to grant the order of possession. The amendment to Section 33 (1) (e) introduced by the Coronavirus (Recovery and Reform) (Scotland) (Act) 2022 meant that the order of possession could only be granted if it is considered reasonable to make such an order.
- 27** The tribunal requires to exercise its discretion taking all matters into consideration and carrying out a balancing exercise.
- 28** The Respondent was straightforward in his evidence and candid about his mental health issues and the difficulties that he had had in the past as a consequence of the illness. The Applicant, in her letter made reference to issues there had been with the tenancy. The Applicant's representative confirmed that there had been no issues with the Applicant since his most recent discharge from hospital in November 2023. In determining the application, the tribunal had no regard to any historic issues there may have been with the Respondent's tenancy or to any concerns which the Applicant has as a consequence of her parents residing in a flat in the same building as the Property.
- 29** The Applicant's reason for seeking an order of possession is that she wants to sell the Property to use the proceeds to purchase a property abroad. She did not provide any further evidence on the matter.
- 30** The Respondent did not advance an argument that it was not reasonable for the

order of possession to be granted. Indeed, he said in evidence that “he feels it is perhaps time to move” from the Property. It was clear from his demeanour at the Hearing that, understandably, the situation he finds himself in is stressful. This is supported by the correspondence from his mental health officer and his psychiatrist.

- 31** The tribunal accepted that Mr Heath had provided considerable support to the Respondent in assisting him with his application for housing to the local authority. Neither Mr Currie or his representative submitted to the tribunal that the order for possession should not be granted. Mr Heath’s position was that the effect of any order for possession should be postponed to allow the local authority ample opportunity to arrange suitable housing for the Respondent.
- 32** On one view, the Applicant’s desire to evict the Respondent so that she could purchase a property abroad is not particularly persuasive. However, in the particular circumstances of this application and in weighing the evidence, the tribunal determined to grant the order of possession. The uncertainty of the Respondent’s housing situation would not necessarily be abated by the order being refused. The tribunal accepted the evidence of the Respondent that he does consider that it is time for him to move.
- 33** The tribunal considered it reasonable that the order of possession be postponed and considered that it had the power to do so in terms of Section 20 of the 1988 Act, as amended. It also noted the submissions made by Ms Cooke in this regard. Postponement would allow the local authority an opportunity to find suitable accommodation for the Respondent and the tribunal postponed the date of possession to 15 July 2024.

## **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.**

**Martin J. McAllister  
Legal Member  
1 April 2024**