



**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/22/1833**

**Re: Property at Flat 1/2 32 Elizabeth Street, Cessnock, Glasgow, G51 1AD (“the Property”)**

**Parties:**

**Mrs Emma Gannon, 6 The Lindens, Bothwell, Glasgow, G71 8LS (“the Applicant”)**

**Mr Tanveer Qateel, Flat 1/2 32 Elizabeth Street, Cessnock, Glasgow, G51 1AD (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Gerard Darroch (Ordinary Member)**

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

**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 13 June 2022, 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 and subsequently, including a copy of the Tenancy Agreement, AT5, Notice to Quit, Section 33 Notice and Section 11 Notice.

2. On 21 September 2022, 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. An initial Case Management Discussion (“CMD”) was fixed for 12 December 2022 but this was postponed at the request of the Respondent’s agent from Govan Law Centre, there being no objection on behalf of the Applicant. A fresh CMD was fixed for 2 March 2023 which proceeded.

### **Case Management Discussion**

4. The CMD took place on 2 March 2023 by telephone conference call before the same Tribunal Members. It was attended by the Applicant’s representative, Ms Lyndsay Bell from Friends Legal and the Respondent’s representative, Ms Kathryn Cochrane of Govan Law Centre.
5. Following detailed discussion, the Tribunal adjourned the CMD to an Evidential Hearing in order for further evidence to be presented, particularly with a view to the Tribunal being satisfied on the reasonableness or otherwise of an eviction order being granted, as now required in terms of the amended Section 33 of the 1988 Act. It was noted by the Tribunal that the Respondent was not challenging any of the technical aspects of the eviction and simply wished a Hearing on the reasonableness requirement. It was also noted by the Tribunal that the Respondent does have applications underway for alternative housing more suitable to his particular needs. Following the CMD, the Tribunal issued a CMD Note, detailing the discussions which had taken place, and a Direction outlining the requirements of the Tribunal in advance of the Hearing, including the lodging of documentation, witness lists and submissions on reasonableness at least 14 days in advance of the Hearing. Said Note and Direction were issued to parties’ representatives on or around 22 March 2023. On or around 5 May 2023, the parties representatives were notified of the date and other details for the Hearing. At the request of the Respondent’s agent, an Interpreter was arranged by the Tribunal for the Hearing, to assist the Respondent who has language difficulties.
6. On 22 May 2023, the Respondent’s representative emailed the Tribunal seeking additional time, until 30 May 2023 to lodge the documentation required in terms of the Direction. This was opposed by the Applicant’s representative. The Applicant’s representative also submitted by email on 22 May 2023, detailed written Submissions in terms of the Direction and the index coversheet in respect of her Inventory of Productions, confirming that the documentation itself would follow the next day. The Tribunal was not notified until 30 May 2023 of the Respondent’s request for additional time. It was noted that, as at the expiry of 30 May, no documentation in terms of the Direction had, in fact, been lodged on behalf of the Respondent and nor had the Applicant’s Productions. The Tribunal accordingly decided to postpone dealing with any late lodging of documentation at the outset of the Hearing. On 31 May 2023, the Respondent’s representative emailed the Tribunal to intimate her withdrawal from acting for the Respondent. On 1 June 2023, the Applicant’s representative lodged the Productions, with an explanation (administrative oversight) as to why they had

not been lodged when anticipated, together with a List of Witnesses for the Applicant, indicating the only witness being the Applicant herself. Given the Respondent's representatives withdrawal from acting, the Tribunal issued notification direct to the Respondent on 1 and 2 June 2023 by First Class Recorded Delivery post of both his representative's withdrawal and copies of the Submissions and Inventory of Productions lodged on behalf of the Applicant. It was noted by the Tribunal from the Royal Mail "track and trace" information available online that at least one of these Recorded Delivery notifications was confirmed to have been delivered to the Respondent and signed for on 3 June 2023 at 10.05am.

## **Evidential Hearing**

7. The Evidential Hearing took place on 5 June 2023 by telephone conference call. In attendance with the two Tribunal Members and Hearings Clerk were the Applicant, her husband, Mr Chris Dancer (as Supporter only), the Applicant's representative, Ms Bell (as above), Mr Singh (Urdu Interpreter for the Respondent) and Ms A McAllister (as an Observer only). The Respondent was not in attendance. The Tribunal delayed the commencement of the Hearing for around 5-10 minutes to allow the Respondent to join late but he did not do so. The Legal Member requested that the Interpreter stay on the call meantime in case the Respondent joined in the course of the Hearing. Mr Singh did so.
8. Following introductions and introductory remarks by the Legal Member, Ms Bell was asked to confirm the Applicant's position, given the recent withdrawal from acting for the Respondent by his former representative, Ms Cochrane (as above). Ms Bell confirmed that the Applicant wished to proceed today in seeking an eviction order, citing the background circumstances to this application and particularly, the length of time it had taken to get to this point. She made the point that the pre-action notices had been served in 2021, the Tribunal application has been going on for almost a year and that for at least 6 months of that, the Respondent has had legal representation. She had contacted the Respondent's representative a couple of times since the CMD but no further information had been forthcoming about the Respondent's housing application(s) and no documentation has been lodged with the Tribunal in response to the Direction on behalf of the Respondent. Ms Bell confirmed that she had been contacted by the Respondent's representative in April 2023 to ask if the Applicant would be prepared to allow the Respondent to stay in the Property on the basis of a £50 increase in rental per month. The Applicant declined that offer. Ms Bell confirmed that she had sent details regarding the Hearing and copies of her Submissions and Productions to the Respondent directly at the end of last week by Recorded Delivery post, given his representative's withdrawal, although the Royal Mail 'track and trace' system has not yet been updated as to whether or not that has yet been delivered and signed for. Ms Bell has not been contacted directly by the Respondent and nor has the Applicant herself. The Applicant advised that she does have an update from her letting agent, who communicates with the Respondent on her behalf (as the letting agent speaks Urdu), that they had arranged for an insurance quotation to be carried out at the Property with the agreement of the Respondent on 16 May 2023 but that when the person attended on that date,

there was no answer at the door so access had not been obtained. The Ordinary Member referred to the email from a social worker on behalf of the Respondent in March 2022 which had been lodged with the Tribunal and asked if there had been any further contact from social work on behalf of the Respondent since. Ms Bell indicated that she had contacted the social worker in February 2023 and that his response at that time was that the Respondent has no active involvement from social work but that they were still assisting with his housing situation. The Tribunal indicated that, in light of the foregoing, it was prepared to proceed with the Hearing today, in the absence of the Respondent, rather than adjourning further.

9. Ms Bell indicated, as a preliminary issue, that there were two amendments/updates to her Written Submissions, firstly, a typographical error in paragraph 6 and secondly, to add in the update that the Applicant had provided as to the failed access to the Property on 16 May 2023. Ms Bell was also advised by the Legal Member that both Tribunal Members had had sight of her Submissions and Inventory of Productions prior to the Hearing.
10. Ms Bell was then asked to present the application to the Tribunal, addressing both the background circumstances and technical aspects of the eviction (although these had not been challenged on behalf of the Respondent) and the matter of reasonableness. Ms Bell referred to her Written Submissions and Inventory of Productions throughout. She stated that the short assured tenancy had commenced on 1 May 2013 and the Notice to Quit and Section 33 Notice had been served on 22 October 2021. The reason that the Applicant wished to recover the Property was so that she could sell it. However, despite the notice period of 6 months, the Respondent remained in the Property and it has been stated on his behalf that he has mental health and mobility issues, although further detail has not been provided. The Tribunal application was lodged on 14 June 2022 and almost 51 weeks have elapsed since then. The application was formally accepted by the Tribunal on 23 September 2022 and the first CMD in December 2022 was postponed at the request of Govan Law Centre who had just been instructed by the Respondent on the basis that the Respondent had limited English and complex housing needs. The next CMD was on 20 March 2023 and despite this being almost 6 months on from the acceptance and notification of the Tribunal application to the Respondent and him having legal representation, matters did not appear to be much further forward with his application(s) for alternative housing. Ms Bell stated that the Applicant had fully complied with the Tribunal Direction issued after the CMD whereas the Respondent had not provided any of the information which had been sought by the Tribunal, despite being legally represented for almost 6 months and that representation only just having been withdrawn, it appears likely, from Ms Cochrane's communications, on the basis of lack of instructions. Ms Bell also stated that there has been a change in circumstances since the application was made to the Tribunal, in that a substantial leak had occurred at the Property and was brought to the attention of the Applicant in December 2022. The source of the leak was not apparent but, following investigation, the leak was eventually resolved in February 2023. However, as is apparent from the photographs and other documentation lodged in the Inventory of Productions, there has been relatively extensive damage to the building, including the bathroom of the

Property. Ms Bell advised that an insurance claim is ongoing but that this has now stalled following the Respondent's failure to give access to the Property on 16 May 2023. There is concern that the dampness caused by the leak may result in rot developing in the Property. To avoid further deterioration in the condition of the Property and the potential implications for the Respondent's health, living in the Property where damp is present and this is the sole bathroom, it has become even more pressing that the Applicant can recover the Property as soon as possible. In addition, again with reference to the documentation lodged, Ms Bell stated that, if the Respondent remained resident, there would be a period of 3 to 4 weeks minimum when he would not be able to occupy the Property as the bathroom required to be stripped out, left to dry out for 3 to 4 weeks and then re-fitted, given that there were no other bathroom facilities at the Property. With further regard to reasonableness, Ms Bell stated that the Applicant had been quite candid and had supplied a lot of detail, as per the Submissions, as to both the financial reasons for her wish to recover possession and sell the Property, as well as the more personal reasons and the impact the whole situation has had, and is still having, on the Applicant. Essentially, the Property has become too much of a burden on her, both financially and emotionally. It is causing her stress, lack of sleep and is affecting her day-to-day life and relationships. The Applicant wishes to recover possession, have the bathroom works carried out and then sell. Ms Bell submitted that the Applicant has been fair and reasonable in her dealings with the Respondent and the Tribunal process. On the other hand, the Respondent has had adequate time for alternative accommodation to be sourced, he has had support, including legal representation over a substantial period and interpretation services available to him today. However, there has been a lack of information provided to the Tribunal and the Respondent has not attended nor arranged alternative representation for today. Ms Bell stated that, in her submission, it is more than reasonable for the Tribunal to grant an eviction order in terms of this application.

11. In response to questions from the Tribunal, the Applicant stated that she was not sure of the Respondent's age but would think he is now retirement age. She was aware that he had previously been on long-term sickness benefit but was unaware of any details regarding the mobility or other health issues alleged. He had taken on the Property, being a first-floor flat, and she does not think the Respondent could therefore have had any serious mobility issues at that time. Ms Bell stated that, although it had been stated on behalf of the Respondent that he is substantially housebound, this does appear to be contradicted by the fact that he appears to have been out on 16 May 2023 when access had been sought. The Applicant does not know details concerning the Respondent's family or social network but is aware that it has been stated that one of the reasons he is trying to find alternative accommodation in the local area is because he has family connections there. The Applicant added that there are similar properties to this one currently available nearby, which are ground floor flats, one in the same street and another in the next street. Communication throughout the tenancy has been mainly between the Respondent and her letting agent who speaks the Respondent's language.

12. In summing up, Ms Bell invited the Tribunal to grant the eviction order and submitted that it was reasonable, in the circumstances, for the Tribunal to do so.
13. The Tribunal adjourned the proceedings in order to deliberate and, on re-convening, the Legal Member advised that the Tribunal had decided to grant the eviction order sought and that the detailed written Decision would be issued to parties shortly.

### **Findings in Fact**

1. The Applicant is owner and landlord of the Property.
2. The Respondent is the tenant by virtue of a Short Assured Tenancy which commenced on 1 May 2013.
3. The Applicant ended the contractual tenancy by serving a Notice to Quit dated 22 October 2021, specifying the end of the notice period (6 months) as 30 April 2022, an ish date in terms of the lease. A Section 33 Notice, also dated 22 October 2021 was also served. Both notices were in the correct form, provided sufficient notice and were served validly on the Respondent by the Royal Mail "Signed For" service, posted on 27 October 2021.
4. The Respondent remained in possession of the Property following expiry of the notice period and it was stated on his behalf that he intended to remain in possession until an eviction order was obtained.
5. This application was lodged with the Tribunal on 14 June 2022, following expiry of the notice period.
6. It was not contested on behalf of the Respondent that the pre-action requirements had been properly carried out, nor that the eviction ground had been met, other than as regards reasonableness.

### **Reasons for Decision**

1. Having regard to the overriding objective stated in Rule 2 of the Regulations that proceedings must be dealt with justly, which includes avoiding delay, the Tribunal determined that, in the circumstances of this case, that the proceedings should not be further adjourned on its own initiative following the very recent withdrawal from acting of the Respondent's representative. The Tribunal was also satisfied that the Evidential Hearing should proceed in the absence of the Respondent in terms of Rule 29. The Tribunal was satisfied that the Respondent has been personally aware of the proceedings for a substantial period of time, has been legally represented for almost the past 6 months and had been properly and timeously notified of the Hearing. The Tribunal considered that both the Tribunal Administration and the Applicant's representative had made every effort to send copies of the documentation lodged on behalf of the Applicant to the Respondent prior to the Hearing, in

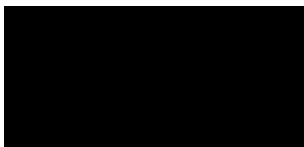
accordance with Rule 62, by recorded delivery post, following his representative's withdrawal. In the Tribunal's view, the Respondent had been given ample opportunity to state his case through his representative but had failed to provide the further information required by the Tribunal in terms of the Direction issued to parties following the CMD. Likewise, the Respondent had had the opportunity to participate in the Hearing, with the services of an Interpreter available to him, which had been requested on his behalf, but had chosen not to participate.

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 prior to the lodging of the Tribunal application. Section 33(1) of the Act states that an order for possession shall be granted by the Tribunal if satisfied that (a) the short assured tenancy has reached its finish; (b) that tacit relocation is not operating; (d) that the landlord 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. The Tribunal was satisfied that all requirements of Section 33(1) had been met.
3. As to reasonableness, the Tribunal considered all documentation before it, the written representations lodged throughout the proceedings on behalf of both parties, the oral submissions on behalf of both parties at the CMD, the Written Submissions lodged on behalf of the Applicant in advance of the Hearing and the oral submissions by and on behalf of the Applicant at the Hearing. With reference to the Respondent, the Tribunal noted the length of the tenancy, the fact that he appeared to have paid his rent throughout and not been a problematic tenant (other than very recently in the context of the leak and repairs required to the Property), that he appeared to be an older gentleman with some vulnerabilities in terms of stated mobility and mental health issues and to have been seeking alternative accommodation but was stated to have complex housing needs due to his mobility and other issues. However, further details and updates sought on these various matters by the Tribunal in terms of the Direction had not been provided and it appeared from the communications received from the Respondent's former legal representative that she had experienced difficulties obtaining instructions. It was also noted by the Tribunal that the Respondent did appear to have support, albeit limited, from family members and from a social worker in relation to his housing situation. With reference to the Applicant, very detailed written submissions had been lodged addressing the issue of reasonableness in accordance with the Tribunal's Direction. The submissions detailed the financial issues experienced by the Applicant as a consequence of the Property having been in negative equity for many years and the drain on her financial resources, primarily from high maintenance and repair bills in respect of the Property, particularly in recent years, which have resulted in outgoings, including her mortgage payments, exceeding the rental income she receives. She had eventually made the decision that this was unsustainable and had decided to sell and serve Notice on the Respondent in October 2021. This was at a time when the notice period was 6 months as a consequence of the pandemic. The Tribunal process has also been fairly prolonged. The Tribunal noted that the financial pressures on the Applicant had been compounded by the discovery of the water leak In

December 2022 and resulting damage to the Property. The Tribunal was satisfied from the Applicant's evidence that the Respondent's delay in vacating the Property and recent lack of cooperation was preventing the remedial works being undertaken and risked the Property being further damaged. The Tribunal considered that the Applicant gave her oral evidence at the Hearing in a credible, straightforward manner and, whilst it appeared that she had initially been sympathetic to the position of the Respondent in seeking to obtain suitable alternative accommodation and did not oppose the postponement of the first CMD in December 2022, she does not consider the lack of progress since then to be acceptable nor reasonable. The Tribunal was persuaded that, apart from the financial impacts on the Applicant, the delays and the current situation are also causing the Applicant stress and anxiety and impacting negatively on her personal life. In all of the circumstances, the Tribunal considered that the impact on the Respondent of granting the eviction order were outweighed by the impact on the Applicant were the order not to be granted and was accordingly satisfied that it was reasonable to grant the order sought.

### **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.**



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**Legal Member/Chair**

**5 June 2023**  
**Date**