



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 Housing (Scotland) Act 1988 (“the 1988 Act”)**

**Chamber Ref: FTS/HPC/EV/23/3350**

**Property at No. 2 Ravensneuk Cottages, Penicuik, Midlothian, EH26 8PL (“the Property”)**

**Parties:**

**Sir Robert Maxwell Clerk and Lady Felicity Faye Clerk, Penicuik Farms Office, Carswell Steading, Penicuik, Midlothian, EH26 9LA (“the Applicants”)**

**Mr David Carson, No.2 Ravensneuk Cottages, Penicuik, Midlothian, EH26 8PL (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and Elizabeth Williams (Ordinary Member)**

**Decision**

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

**Background**

- 1. The Applicant seeks an order for possession of the property in terms of Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). A short assured tenancy agreement, AT5 notice, Notice to Quit, Section 33 Notice, track and trace report and Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 were lodged in support of the application.**
- 2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer. Both parties were notified that a Case Management Discussion (“CMD”) would take place on 18 January 2024 at 10am by telephone conference call and that they were required to participate.**

3. The CMD took place by telephone conference call on 18 January 2024. The Applicant was represented by Mr Forrester Smith, solicitor. The Respondent participated and was represented by his wife, Mrs Carson

### **Case Management discussion**

4. Mrs Carson told the Tribunal that although they like living at the property, the application is not opposed. They have applied for alternative accommodation from the Council but have been told that they are unlikely to be offered something until an eviction order is granted. There are a lot of problems with the property. In response to questions from the Tribunal, Mrs Carson confirmed that they received the Notice to Quit and Section 33 Notice in June 2023. They passed these onto the Council.
5. The Tribunal noted that the owners of the property are Sir Robert and Lady Faye Clerk. Sir Robert Clerk is also the registered landlord. Mr Forrester Smith said that he had been advised that they hold the property in trust for the Applicant. In the absence of any evidence to support this, Mr Forrester Smith asked to amend the name of the Applicant to the owners of the property. This was not opposed by the Respondent and the Tribunal agreed to allow the amendment.
6. Mr Forrester Smith told the Tribunal that the Applicants own a number of rental properties on the estate including a farm and farmhouse. They had discussions with the Respondent before the serving the notices, as rent arrears of £3700 had accrued. They discussed whether the Respondent was in a position to continue with the tenancy and were told that the Respondent would not be re-housed without an eviction order. The lease between the parties entitles the Applicants to serve notice to recover possession. Mr Forrester Smith stated that he did not know the current level of arrears. The Applicants have indicated that they do not intend to pursue the Respondent for the sums which are owed. However, the arrears have caused financial difficulty and the Applicants intend to sell the property, as they cannot afford to carry out necessary work at the property before it could be re-let.
7. Mrs Carson told the Tribunal that the rent arrears are admitted. She said that the Respondent is disabled and has a number of health issues including COPD. The house is not suitable for him, as it has no central heating, only a coal fire in the living room. This is currently problematic, due to the very cold weather. The house is also affected by damp and condensation. Mrs Carson advised the Tribunal that the arrears have increased from the figure specified because she is not currently paying the monthly charge of £445. The arrears started when Mr Carson gave up work due to his health and she had to reduce her hours to care for him. It took a while for benefits to be sorted out. They now receive universal credit and Mr Carson receives PIP. They are struggling to pay the rent due to the cost of living crisis and the cost of fuel. She does not know the current level of arrears. She has read on the internet that the whole estate is being turned into a hospitality and leisure facility.

## **Findings in Fact**

8. The Applicants are the owners and Landlords of the property.
9. The Respondent is the tenant of the property in terms of a short assured tenancy agreement.
10. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondents on 1 June 2023
11. The Respondent resides at the property with his wife.
12. The Respondent has applied for alternative housing from the Council.
13. The Respondent is disabled and has health issues. He is unable to work. He is in receipt of benefits. The Respondent's wife works part time.
14. The Respondent has incurred rent arrears of over £3700 and is not currently paying the rent charge of £445 per month.
15. The Applicants intend to sell the property, as they cannot afford to carry out the work required to re-let the property.
16. The property is not suitable for the Respondent as it is affected by damp and has no central heating.

## **Reasons for Decision**

17. The application was submitted with a short assured tenancy agreement and AT5 Notice. The initial term of the tenancy was 20 February 2004 until 19 August 2004, with a provision that it would continue on a month to month basis after the initial term.
18. Section 32 of the 1988 Act states "(1) A short assured tenancy is an assured tenancy - (a) which is for a term of not less than 6 months; and (b) in respect of which a notice is served as mentioned in subsection (2) below. (2) The notice referred to in subsection (1)(b) above is on which - (a) is in such form as may be prescribed; (b) is served before the creation of the short assured tenancy; (c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under the tenancy; and (d) states that the assured tenancy to which it relates is to be a short assured tenancy."

19. The Tribunal is satisfied that the tenancy agreement between the parties was for an initial term of 6 months and therefore meets the requirements of Section 32(1) of the 1988 Act. The Tribunal is also satisfied that an AT5 Notice was given to the Respondents prior to the creation of the tenancy. In the circumstances, the Tribunal determines that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act.
20. From the documents submitted with the application, the Tribunal is satisfied that the Applicant served a Notice to Quit and Section 33 Notice on the Respondents on 1 June 2023. The Notice to Quit called upon the Respondent to vacate the property on 19 July 2023, an ish date. The Notice contains the information prescribed by the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and complies with the terms of Section 112 of the Rent (Scotland) Act 1984. The Tribunal is satisfied that the Notice to Quit is valid and that the tenancy contract has been terminated. The Section 33 Notice was also served on 1 June 2023 and gave the Respondent more than two months' notice that the Landlord wished to recover possession of the property. A Section 11 Notice was submitted with the application, with evidence that it was sent to the Local Authority. The Applicant has therefore complied with Section 19A of the 1988 Act.
21. Section 33 of the 1988 Act, (as amended by the Coronavirus (Recovery and Reform) (Scotland) Act 2022) states "(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; (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" Subsection 2 states "The period of notice to be given under subsection (1)(d) above shall be – (1) 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". The Tribunal is satisfied that the tenancy has reached its finish and, as the Applicant has served a valid Notice to Quit, that tacit relocation is not operating. A valid notice in terms of section 33(d) has also been served on the Respondents, giving at least two months' notice that the Applicants required possession of the property.
22. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession, in terms of Section 33(e) of the 1988 Act.
23. The Tribunal had regard to the following: -
  - (a) The Respondent does not oppose the application. He has incurred rent arrears and cannot afford the pay for electricity and coal for the property and meet the monthly rental charge. He hopes to be re-housed by the Local Authority.

(b) The property is not suitable for the Respondent. It is affected by condensation and damp and has no central heating. The Respondent is disabled and suffers from COPD.

(c) The Applicants intend to sell the property, as they cannot afford to carry out the work required at the property to allow it to be re-let.

24. For the reasons outlined, the Tribunal is satisfied that it would be reasonable to grant the order for possession.

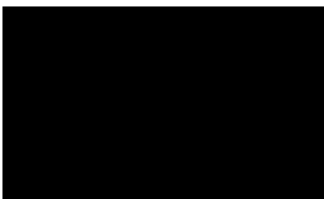
25. The Tribunal is satisfied that the Applicant has complied with the provisions of the 1988 Act and that it would be reasonable to grant the order.

### **Decision**

26. The Tribunal determines that an order for possession of the property should be granted against the Respondent.

### **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**

**18 January 2024**