



**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**

Chamber Ref: FTS/HPC/EV/23/3711

Re: Property at 6 Cheviot Place, Kilmarnock, KA1 3RX (“the Property”)

Parties:

Mr Michael Cairns, 2 Munro Avenue, Kilmarnock, KA1 1JY (“the Applicant”)

Mr Ryan Logie, Ms Lorna Watson, 6 Cheviot Place, Kilmarnock, KA1 3RX (“the Respondent”)

Tribunal Members:

Yvonne McKenna (Legal Member) and Tony Cain (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Possession be granted.

Background

1. This was an application dated 19th October 2023 and brought in terms of Rule 66 (Application for order for possession upon termination of a short assured tenancy) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended.
2. The Applicant provided with his application copies of a short assured tenancy agreement, form AT5, Notice to Quit, section 33 Notice, Section 11 Notice, and relevant proof of service.
3. All of these documents and forms had been correctly and validly prepared in terms of the provisions of the Housing (Scotland) Act 1988, and the procedures set out in that Act had been correctly followed and applied.
4. In relation to the Notice to Quit and the section33 Notice these had been personally served on the Respondent by the Applicant in the presence of his

wife on the 8 August 2023 and the Respondents had each signed the section 33 notice to confirm receipt.

5. The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 25 January 2024, and the Tribunal was provided with the execution of service.
6. Both parties submitted written representations in advance of the Case Management Discussion.

The Case Management Discussion

7. A Case Management Discussion was held at 14:00 on 13 March 2024 by teleconference. The Applicant was present together with his wife Mrs Elizabeth Cairns. The Respondent was not present and was not represented.
8. On the morning of the CMD, the Respondent had e-mailed the Tribunal taking issue with information provided by the Applicant, in relation to the content of a conversation between parties directly, at a meeting on the 23rd February 2024.
9. No other written representations were received from the Respondent.
10. Mr Cairns said that he was seeking an Order for Possession. He is a 76 year old man. He is retired and rents out the Property along with another two properties. He told the Tribunal that he wanted to enjoy his retirement, and was finding it a strain renting out his properties, and that it was “not worth it”. He had determined in August 2023 that he wanted to sell the Property and had served the required Notices. At the meeting that had taken place in August 2023 with the Respondent, the Respondent had indicated to the Applicant that they might be interested in buying the Property from him. Mr Cairns had explained to the Respondent that they would require to obtain a mortgage. He told the Respondent that he would ask his estate agents, “Property Matters”, who are based in Kilmarnock, to give the Respondent some information in relation to the process. He wanted to see if he could help the Respondent in some way. He said that it would appear that the Respondent did not engage in the process.
11. In his last conversation with Mr Ryan Logie, Mr Cairns said that he had asked Mr Logie if he had managed to find alternative accommodation. Mr Logie said that he had been offered alternative accommodation but that it was not in the catchment area for his youngest daughter’s school. Mr Cairns was unaware if this was an offer of local authority housing or from the private rented sector.
12. As he had detailed in his application, the Respondent had not paid any rent for the Property for the months of February and March 2024. He had increased the rent in October 2021 from £525 to £550 per month.

13. He had no dialogue with the Respondent since their meeting on 23 February 2024. Ms Watson had been annoyed that he had made contact with the Council and had said that he had no right to do that but he had pointed out to her that he was required to serve notice on the local authority before he was able to make an application to the Tribunal.
14. Mr Cairns said that when the Notice to Quit and section 33 Notice were served, that he had told the Respondent that he would not hold them to removing from the Property on the removal date specified i.e. in October 2023. He said that he was due to travel to Australia to see his son, and would not be returning until January 2024, but that he would expect the Respondent to have found alternative accommodation by the beginning of January 2024.
15. In relation to the Respondent's circumstances Mr Cairns said that Ms Watson is in employment as a nurse in the local hospital and that Mr Logie is employed by a local double glazing firm in Kilmarnock. The couple have 3 children living with them aged 16 years, 17 or 18 years and their youngest daughter is 7 or 8 years old. No one in the family has any special needs or disabilities as far as he is aware and the Property has not been adapted to accommodate the family.

Findings In Fact

16. The Applicant let the Property to the Respondents by virtue of a short-assured tenancy agreement within the meaning of the Act;
17. The Applicant competently ended the tenancy by serving a Notice under Section 33 of the Act and a Notice to Quit.
18. The Applicant competently served a notice under Section 11 of the Homelessness (Etc) (Scotland) Act 2003 to East Ayrshire local authority.
19. The Applicant is retired and is 76 years of age. He wishes to sell the Property and to be able to enjoy his retirement without the burden of being a private landlord.
20. The Respondent is in rent arrears in the sum of £1,100.
21. The Respondent and the Respondent's family members living in the Property are not known to have any particular health issues.
22. The Respondents have not engaged with the Tribunal process other than on the morning of the CMD lodging a brief note disputing the content of a verbal discussion with the Applicant in February 2024. The Respondent has not set out in written submissions any representations which contest this application or set out any reason why it would be unreasonable to grant the Order for Possession. The Respondent has chosen not to attend the CMD.

23. It is reasonable in all the circumstances for the Order for Possession to be granted.

Reasons for Decision

24. In terms of Section 33 of the Housing (Scotland) Act 1988 as amended, the Tribunal may make an order for possession of the house let on the tenancy if: (i) the short assured tenancy has reached its end; (ii) tacit relocation is not operating; (iii) the landlord has given to the tenant notice stating that he requires possession of the house; and (iv) it is reasonable to make an order for possession.

25. All of the above criteria had been satisfied in this application, and the Tribunal was satisfied in the circumstances explained by the Applicant, and in the absence of the Respondent, having been afforded due notice of the date of the CMD, that it was reasonable to grant an order for possession.

26. A section 11 notice under the Homelessness etc (Scotland) Act 2003 has been issued to East Ayrshire Council. In the event of an eviction order being made the local authority is under a statutory duty to make suitable alternative accommodation available.

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

13 March 2024

Date