



**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/23/4241

Re: Property at 22 Dykes Avenue, Annan, DG12 5EL (“the Property”)

Parties:

Mr Kevin Watret, 25 Northfield Park, Annan, DG12 5EZ (“the Applicant”)

**Ms Jolanta Izydorczyk, 22 Dykes Avenue, Annan, DG12 5EL (“the
Respondent”)**

Tribunal Members:

Graham Harding (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Applicant was entitled to an order for possession
of the property.**

Background

1. By application dated 28 November 2023 the Applicant’s representatives Cullen Kilshaw LLP, Solicitors, Galashiels applied to the Tribunal for an order for possession of the property in terms of Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Applicant submitted a copy of a tenancy agreement, Form AT5, Notice to Quit, Section 33 Notice, proof of service and Section 11 Notice with proof of service in support of the application.
2. By Notice of Acceptance dated 21 December 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 23 February 2024.

4. By email dated 2 March 2024 the Respondent requested that a Polish interpreter attended the CMD.
5. By email dated 25 March 2024 the Respondent advised the Tribunal that she would not be attending the CMD as an agreement had been reached with the Applicant that she would vacate the property on 31 July 2024.
6. By email dated 2 April 2024 the Applicant's representatives advised the Tribunal that there was no agreement between the parties and the Applicant continued to seek an order for possession.

The Case Management Discussion

7. A CMD was held by teleconference on 3 April 2024. The Applicant did not attend but was represented by Mr Sebastian Janus from the Applicant's representatives. The Respondent did not attend nor was she represented. The Tribunal being satisfied that proper intimation of the CMD had been given to the Respondent determined to proceed in her absence.
8. The Tribunal noted that the parties had entered into a Short Assured Tenancy that commenced on 20 November 2015 and endured for a period of six months until 20 May 2016 and then from month to month thereafter. The Tribunal also noted that the Respondent had been served by recorded delivery post with a Notice to Quit and Section 33 Notice both dated 12 September 2023 and providing that the tenancy would end on 20 November 2023. The Tribunal also noted that a Section 11 Notice had been sent to Dumfries and Galloway Council by email on 28 November 2023.
9. Mr Janus explained that the Applicant required possession of the property for his daughter who was expecting a baby and the property she was currently living in was not suitable, He subsequently advised the Tribunal following a short adjournment to take instructions from the Applicant that the Applicant's daughter was due to have her baby in the next week.
10. Mr Janus advised the Tribunal that the Applicant had attended at the property recently but had not been permitted access by the Respondent who had advised him that she and her husband were moving back to Poland at the end of July and would vacate the property then. Mr Janus said that there had been no agreement on the part of the Applicant that the Respondent could remain in the property until then and he was instructed to obtain an order and if granted the Applicant would then try to negotiate a date for the Respondent to leave.
11. In response to a query from the Tribunal and after a short adjournment to allow him to take instruction from the Applicant, Mr Janus said that the property had three bedrooms whereas the Applicant's daughter's current property which was also owned by the Applicant had two bedrooms and

she already had one child. Mr Janus also explained that the Respondent and her husband were in their sixties and in full time employment, the Respondent as a cleaner and her husband a sawmill worker.

12. Following a discussion on whether in light of the disputed facts as to whether there was an agreement regarding the date of departure or whether in the circumstances the Tribunal should assign a hearing to consider reasonableness, after taking the Applicant's further instructions, Mr Janus indicated that the Applicant would be content with an order that was postponed until 15 July 2024.

Findings in Fact

13. The parties entered into a Short Assured Tenancy that commenced on 20 November 2015 that endured until 20 May 2016 and continued from month to month thereafter.
14. The Respondent was served with a Notice to Quit and Section 33 Notice by recorded delivery post sent on 12 September 2023.
15. Dumfries and Galloway Council was given intimation of the proceedings by way of a Section 11 Notice dated 28 November 2023.
16. The Applicant's daughter is expecting a second child.
17. The Applicant intends that on obtaining vacant possession of the property his daughter and family will move into it.
18. The Respondent and her husband intend to remove from the property by 31 July 2024.

Reasons for Decision

19. The Tribunal was satisfied from the documents submitted and the oral submissions that the parties entered into a Short Assured tenancy that commenced on 20 November 2015. The Tribunal was also satisfied that a valid Notice to Quit and Section 33 Notice had been served on the Respondent under Section 33 of the 1988 Act and that proper intimation of the proceedings had been given to Dumfries and Galloway Council by way of a Section 11 Notice.
20. The Tribunal was therefore satisfied that procedurally the criteria for granting an order for possession of the property had been met subject to it being reasonable for such an order to be made. In reaching a decision on reasonableness the Tribunal noted that the Applicant was prepared to agree that the order if granted should be postponed until 15 July 2024 as thereafter it would be necessary to serve a charge for removal on the Respondent giving 14 days' notice and this would take any enforcement of the order to the end of July which was when the Respondent had said she

intended to vacate the property. In these circumstances given that the Respondent had indicated that it was her intention to remove from the property by 31 July and although it appeared there was no agreement to that effect the Tribunal was satisfied in the circumstances that it was reasonable to grant the order sought but postponed until 15 July 2024.

Decision

21. The Tribunal being satisfied it had sufficient information before it to make a decision without the need for a hearing finds the Applicant entitled to an order for possession of the property but postponed until 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.

Legal Member/Chair

**3 April 2024
Date**