



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section under Section 33 of the
Housing (Scotland) Act 1988 (hereinafter referred to as “the 1988 Act”) for
Recovery of Possession of a Short Assured Tenancy**

Chamber Ref: FTS/HPC/EV/22/1802

Re: Property at 272 3F2 Gorgie Road, Edinburgh, EH11 2PP (“the Property”)

Parties:

Gastjad Ltd, 18 Campbell Road, Edinburgh, EH12 6DT (“the Applicant”)

Mr Aaron Orr, 272 3F2 Gorgie Road, Edinburgh, EH11 2PP (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988. The Tribunal supersedes extract for a period of 6 weeks.

1. Introduction

This Hearing was a further Case Management Discussion fixed in terms of Rule 17 of the Procedure Rules concerning an Application for Recovery of Possession on termination of a Short Assured Tenancy under Section 33 of the Housing (Scotland) Act 1988. The purpose of the Hearing being to further explore how the parties dispute may be efficiently resolved. The purpose of the hearing was explained to parties. Parties understood a final decision on the Application could also be made.

2. Attendance and Representation

The Applicant was represented by Jaqueline Ridley, Blacklocks, First Floor 34 Bernard Street, Edinburgh, EH6 6PR. Mr Menzies and Mrs Menzies who own Gastjad were also present.

The Respondent attended the Tribunal personally.

3. Preliminary Matters

The Tribunal noted that an updated rent statement had been lodged on 2nd November 2022 noting that the Respondent was in arrears of £9370 as at 2nd November 2022.

The Respondent told the Tribunal he wasn't able to access advice but had got some advice from a friend. He said he had attempted to submit videos to the Tribunal which he said showed Mr and Mr Menzies visiting the property and trying to get access on one occasion. He had taken no more steps to have them lodged. The video was not in the Tribunal's view relevant to the application.

There were no preliminary matters arising.

4. Case Management Discussion

For the Applicant

The Applicant's representative set out that the Applicant sought an Order for Repossession. The Tribunal was advised that the Applicant's representative served further notices after being instructed following the notice period being changed on a statutory basis from April 2022. She said that the rent arrears continue to accrue and the arrears as at 2nd November 2022 was £9370. Her position further was that as a short assured tenancy her steps on behalf of the Applicant complied with the relevant statutory provisions.

The Applicant's representative relied upon the Short Assured Tenancy which commenced on 10th March 2015 and continued to 9th September 2015 she said. It thereafter continued from month to month. A section 33 notice was served on 7th April 2022 with an expiry of 9th June 2022. The Applicant's representative said the Applicant brought same to an end on the *ish* and had wanted to bring the SAT to an end before the pandemic and had served notices which she said did not have the prescribed notice period under the coronavirus legislation and were invalid.

The Applicant's representative said the Applicants were semi-retired and the property was an investment but they want to sell it to supplement their income. She said despite the opportunity get legal advice or to lodge medical evidence the Respondent had not taken any steps to do so.

For the Respondent

The Respondent said his girlfriend had been assisting him to meet the rent for a while. He said he had been trying to contact family for help in the borders and the local authority would not help until immediately before any eviction. He said he had been told the deposit should have been held by deposit Scotland and this may not have been done. He said he had been trying to speak to his parents and they were not interested. He had been looking into alternative accommodation in Kelso. There is an issue with his pets he said he had 10 cats, snakes and a lizard. He was not receiving any benefits. He said he received the Notice to Quit before and it did not have the necessary notice period as it ought to have been 6 months when it was served in February 2022. The Respondent said he agreed the tenancy was a short assured tenancy and he had received the AT5 before agreeing it. He accepted he received the current notices and that the previous notices were invalid.

He confirmed he was on no benefits and had no help with housing costs. He finds it difficult asking for help and is not working. He has a diagnosis of inattentive ADHD.

5. Findings in Fact and Law

- 1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and that to do so would not be contrary to the interests of the parties having regard to the Overriding objective. All parties were present and the facts were sufficiently agreed such as to allow the Tribunal to make a decision. The Respondent had been previously allowed an opportunity to obtain legal advice and representation and or to lodge medical evidence but had been unable to take steps.**
- 2. The Parties agreed that the tenancy was in terms of Section 32(1) of the 1988 Act, a Short Assured Tenancy to which a prescribed notice namely a valid AT5 had been served before creation of the short assured tenancy.**
- 3. In terms of Section 33 of the 1988 Act the Tribunal considered that the Short Assured Tenancy had reached its end and the Notice to Quit contained the correct end date. The Tribunal was advised of a previous Notice to Quit but this and the relevant notices were accepted by both parties and are invalid due to not containing the prescribed notice period. Both parties accepted that the only valid Notice to Quit was lodged and relied upon by the Applicant.**
- 4. Further the Tribunal was satisfied that no tacit relocation was operating, no further contractual tenancy was in existence and a valid Notice to Quit had been served on the Respondent terminating the tenancy with the necessary notice given to the Respondent.**
- 5. Proof of a correct method of service of the Notice to Quit had been lodged and the necessary Section 11 notice sent to the relevant local authority.**
- 6. In considering reasonableness as required in balancing the circumstances of both parties the Tribunal noted that the Respondent was not working,**

he did have vulnerability but had taken limited steps to assist his situation and to seek alternative accommodation. The Tribunal also noted that the Applicant had not been able to receive investment income as expected from the property due to substantial rent arrears and the fact that the Respondent was not in employment and had no income which was to continue. The Tribunal found that it was reasonable to grant the Order sought.

7. Accordingly in terms of Section 33 of the 1988 Act the Tribunal granted an order against the Respondent for possession of the Property.
8. In order to balance the interest of both parties and in the interest of justice to allow the Respondent some further time to obtain alternative accommodation the Tribunal superseded extract for 6 weeks.

6. Reasons for Decision

The Tribunal considered that the Application was full and that the facts were sufficiently agreed to grant the Order. The Applicant had complied with the relevant statutory provisions and the question for the Tribunal was whether the Order sought was reasonable. Whilst the Respondent was single and vulnerable and not working he was not able to meet the contractual rent and had not been able to seek legal advice. The Applicants were semi-retired and unable to gain income on the property in the absence of contractual rent nor any plan that contractual rent would be achieved. Accordingly in the circumstances the Tribunal considered it was reasonable to grant the Order.

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.

Karen Kirk

Legal Member/Chair

9th November 2022

Date