



**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/21/2717

**Re: Property at Hillview Steadings, Whitecairns, Aberdeen, AB23 8UH (“the
Property”)**

Parties:

**Mr Scott Glatley, Mrs Claire Glatley, c/o 7 Albert Street, Aberdeen, AB25 1XX
 (“the Applicants”)**

**Mr Greg Reid, Hillview Steadings, Whitecairns, Aberdeen, AB23 8UH (“the
Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined to make an order for repossession against the
Respondent in favour of the Applicant**

Background

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under section 33 of the Housing (Scotland) Act 1988. In support of the application the Applicant provided the following documentation:-
 - (i) Short Assured Tenancy Agreement between the parties together with Form AT5;
 - (ii) Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988;

- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Aberdeenshire Council together with proof of service; and
 - (iv) Copy correspondence between the Applicant and Respondent;
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for the 1 March 2022 to take place by teleconference due to the restrictions imposed by the Covid-19 pandemic. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers.

Case Management Discussions

- 3 The Case Management Discussion took place by teleconference on 1 March 2022. The Applicant was represented by Gareth Winchester, Winchester Lettings, who was accompanied by Douglas Winchester as a supporter. The Respondent was present.
- 4 The Legal Member explained the purpose of the Case Management Discussion. The Tribunal then proceeded to hear from both parties. The following is a summary of the discussion. For the avoidance of doubt this does not constitute a verbatim account of the submissions from the parties, but is focused instead on the issues relevant to the Tribunal's determination of the application.
- 5 Mr Winchester explained that the Applicant sought an order for repossession based on the termination of the short assured tenancy. He explained that there were significant rent arrears and whilst he had endeavoured to assist the Respondent in finding solutions to this the debt had grown too large which left the Applicant with no option but to serve a notice to quit. He confirmed that the outstanding rent arrears as at 1st March were £16,950. The rent was due on the 29th of the month in advance.
- 6 The Respondent explained that he did not disagree with the position put forward by Mr Winchester on the Applicant's behalf. However there were mitigating circumstances on both a personal and work level. He confirmed that he had lost employment in July 2020 when his role was terminated due to the coronavirus pandemic. He had only commenced his role with the company in January 2020. He confirmed that he had remained unemployed ever since. This was the first time he had experienced these issues. The loss of his employment had a significant impact, having resulted in him going from receiving a salary of approximately £65,000 to having no income.

- 7 The Respondent went on to explain that he had previously occupied the property with his former partner, as a joint tenancy. They had since gone their separate ways, but had two children together who he continued to see on a regular basis. The children considered the property to be their second home. He and his former partner continued to have an amicable relationship and informal arrangements were in place for contact with the children. Other than paying support for his children, he was financially supporting himself. He had been relying on family for support, his parents were both retired, however he was not in a position to move in with them given the amount of belongings he had accumulated and his dog. He literally had nowhere to go.
- 8 In addition to his employment issues, the Respondent explained that he had also been involved in a near fatal car accident in August 2021 which had impacted on his physical and mental health. This had resulted in him bringing a case to the ombudsman as his insurers had refused his claim. He had also been part of the novovax trial in October 2021. In November 2021 the NHS had given him a small dose of a new booster which had resulted in him suffering a severe allergic reaction.
- 9 In response to questions from the Tribunal the Respondent confirmed that he was seeking employment. He had weekly appointments with the job centre. This was a new situation he found himself in. He had never before been out of employment. He confirmed that he had applied for universal credit but was not entitled to payment towards his rent as the value was too high. He confirmed that he did get his council tax paid. The Respondent confirmed that he had not previously had to deal with the benefits system and it was new to him. He had not sought advice, although he confirmed that he had obtained a grant from the Scottish Government which had been paid towards his arrears. He confirmed that he had not sought any assistance from the local authority with his housing options.
- 10 Mr Winchester confirmed that he sympathised with the Respondent's position. He confirmed that he knew the Respondent personally and did not want to see him going through a tough time. He had tried to offer assistance. However he was now concerned that the situation had become unmanageable given the level of arrears that had accrued. Nothing was being paid to the rent account and he was concerned that the Respondent was simply going to accrue more debt if he remained in the property. If the order was granted the Respondent could look to get assistance with rehousing from the local authority. It may not be ideal but it would bring a difficult situation to an end. The Respondent confirmed that he had no animosity towards Mr Winchester nor the Applicants. Being out of work had been the catalyst for the issues he had experienced. That was the grim reality.

Relevant Legislation

- 11 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Housing (Scotland) Act 1988, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020

(Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

33 *Recovery of possession on termination of a short assured tenancy.*

(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; and

(c).

(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.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than six months, that period;

(ii) in any other case, six months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.

12 The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 are also relevant to this application.

Findings in Fact and Law

- 13 The Applicants entered into a Short Assured Tenancy Agreement with the Respondent and Louise Hough which commenced on 29 April 2017.
- 14 The tenancy between the parties was a short assured as defined by section 32 of the Housing (Scotland) Act 1988.
- 15 The Respondent became the sole tenant of the property on 2 May 2018 when Louise Hough's interest in the tenancy was terminated.
- 16 On 28 April 2021 the Applicant delivered a Notice to Quit to the Respondent which sought to terminate the tenancy on 28 July 2021. The Notice to Quit was in the prescribed form.
- 17 On 28 April 2021 the Applicant also delivered a Notice under section 33 of the Housing (Scotland) Act stating that the Applicant required the property back by 31 October 2021.
- 18 In terms of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £1100 per calendar month.
- 19 As at the date of the Case Management Discussion arrears in the sum of £16,950 were outstanding.
- 20 The Respondent is presently unable to make payment of the rent due as a result of having lost employment in July 2020.
- 21 The Applicant has sought to enter payment agreements with the Respondent and has offered assistance.
- 22 The Respondent resides alone with no dependents but has contact with his children on a regular basis.
- 23 It is reasonable to make the order sought by the Applicant.
- 24 The provisions of section 33 of the Housing (Scotland) Act 1988 have been met.

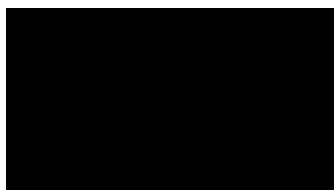
Reasons for Decision

- 25 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. There did not appear to be any facts in dispute between the parties which would require the Tribunal to fix a hearing in the matter.

- 26 The Tribunal was satisfied that the Respondent had been served with a valid Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988. The issue for the Tribunal to determine therefore was whether it was reasonable in all the circumstances to grant an eviction order.
- 27 The Tribunal had a great deal of sympathy with the position the Respondent had found himself in but could not ignore the significant rent arrears that had accrued as a result of the non-payment of rent over a prolonged period. Whilst the Tribunal noted the Respondent's ongoing efforts to find employment and the setbacks he had experienced, it could not ignore the fact that the arrears were continuing to increase in light of the Respondent's lack of sufficient income to meet his rental obligations. It appeared to the Tribunal that the Respondent had simply found himself in a position where he was unable to afford the ongoing rent for the property and that to prolong the tenancy would only result in further debt accruing. The Tribunal therefore agreed with Mr Winchester's view that the granting of the order may assist the Respondent in reaching a better financial position.
- 28 The landlord's duty to comply with the pre-action requirements was also relevant to the application before the Tribunal and it therefore had to consider whether the Applicant had complied with that duty, and if not, what weight to give to any failure to comply having regard to the particular facts and circumstances of the case. The Tribunal was of the view that the Applicant, through his representative, had made several efforts to provide advice and assistance to the Respondent to support him in addressing the rent arrears. Mr Winchester had remained in constant contact with him and it did appear to the Tribunal that the eviction order was very much a last resort.
- 29 Accordingly, having regard to the particular facts and circumstances of the case the Tribunal concluded that it would be reasonable to grant the eviction 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.



Legal Member/Chair

1st March 2022
Date