



**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/22/4246

Re: Property at 15 Taylor Street, Forfar, DD8 3JQ (“the Property”)

Parties:

**Mr Rudi Ryshway and Mrs Jennifer Ryshway, Dove Cottage, Finavon, Forfar,
DD8 3PX (“the Applicant”)**

Ms Tammy Petrie, 15 Taylor Street, Forfar DD8 3JQ (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application should be determined without a
Hearing and made an Order for Possession of the Property.**

Background

By application, dated 25 November 2022, the Applicant sought an Order for Possession of the Property under Section 33 of the Housing (Scotland) Act 1988. The application was accompanied by copies of a Short Assured Tenancy Agreement between the Applicant as Landlord and the Respondent and Mr Sean Leggatt as Tenants from 8 August 2016 to 7 February 2017 and if not terminated on the latter date, continuing on a month to month basis thereafter until terminated by one month’s written notice given by either Party to the other, a Section 33 Notice and Notice to Quit, both dated 3 August 2022 and both requiring the Respondent to vacate the Property by 7 October 2022, with evidence of service of both Notices on the Respondent, Ms Petrie, on 4 August 2022. The Short Assured Tenancy Agreement contained an acknowledgement by the tenants that they had received a Form AT5 Notice. The tenancy is, therefore, a Short Assured Tenancy.

The Applicant also provided the Tribunal with a copy of a Planning Consent by Angus Council for the erection of a dwellinghouse at 63 Brechin Road, Kirriemuir and

stated that the Applicant, Mr Ryshway, has purchased a plot of land on which he will build a new house and that he requires to sell the Property in order to fund the construction. The Applicant owns one further property which was his late mother's house and is currently rented, but which, for sentimental purposes, the Applicant does not want to sell.

On 7 February 2023, the Applicant's solicitors confirmed they wished to proceed against the Respondent alone, and not against her co-tenant, Mr Leggatt, under the Tenancy Agreement, as he had left the Property in January 2020. They accepted that any Order of the Tribunal would only be enforceable against the Respondent.

On 29 March 2023, the Tribunal advised the Parties of the time and date of a Case Management Discussion and the Respondent was invited to make written representations by 19 April 2023. The Respondent did not provide any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 9 May 2023. The Applicant was represented by Mr John McKeown of Jackson Boyd Lawyers LLP, Glasgow. The Respondent was not present or represented.

The Applicant's representative told the Tribunal that the Respondent lives on her own. The Applicant bore no ill-feeling towards the Respondent but had decided that the Property should be sold in preference to selling the other rented property owned by the Applicant, as it had been the home of the Applicant, Mr Ryshway's, late mother and held sentimental value for the Applicant.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

Section 33 of the 1988 Act states that the Tribunal may make an Order for Possession of a house let on a Short Assured Tenancy if it is satisfied that the Short Assured Tenancy has reached its end, that tacit relocation is not operating, that no further contractual tenancy is for the time being in existence, that the landlord has given to the tenant notice stating that he requires possession of the house, and that it is reasonable to make the Order for Possession.

The Tribunal was satisfied that the tenancy had reached its end, that, by service of the Notice to Quit, tacit relocation was not operating, that there was no further contractual tenancy in existence between the Parties and that the Notice required under Section 33 of the 1988 Act had been properly given. The remaining matter for the Tribunal to consider was, therefore, whether it would be reasonable to issue an Order for Possession.

The Tribunal noted that the Applicant owns another rented property but, for sentimental reasons, does not wish to sell it and was satisfied that it was reasonable to seek the release of funds from the sale of the Property to fund the building of the new house. The Tribunal also noted that the Respondent had not made any written representations or appeared or been represented at the Case Management Discussion, so had not provided any information for the Tribunal to take into account in arriving at its Decision.

Having considered carefully all the evidence before it, the Tribunal was satisfied that it was reasonable to make an Order for Possession.

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 _____

9 May 2023
Date