



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 (“The Act”).

Chamber Ref: FTS/HPC/EV/23/1811

Re: Property at 23D Culduthel Mains Gardens, Inverness IV26RD (“the Property”)

Parties:

Ffordes (Photographic) Limited, The Kirk. Wester Balblair, By Beauly IV47BQ (“the Applicant”)

Mr Rafal Szczepanski, and Mrs. Izabela Monika Szczepanski, both residing at 23D Culduthel Mains Gardens, Inverness IV2 6RD (“the Respondents”)

Tribunal Members:

Andrew Cowan (Legal Member) and Elaine Munroe (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order against the Respondent, for possession of the Property under section 33 of the Housing (Scotland) Act 1988.

Background

1. This is an Application dated 2nd June 2023 and made in terms of rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The Applicant is the landlord of the Property, and the Respondents are the tenants, in terms of a Short Assured Tenancy Agreement between the parties, that commenced on 15th June 2015.
2. The Applicant is seeking an order for possession under section 33 of the Housing (Scotland) Act 1988.

3. The application is subject to the *Cost of Living (Tenant Protection) (Scotland) Act 2022*.
4. The Application called for a case management discussion (“CMD”) by conference call at 10 AM on 23rd October 2023. The Applicant was represented on the conference call by Mrs Alice Cochrane of Tughan and Cochrane, the Landlord’s letting agent. Mrs. Izabela Szczepanski joined the conference call and made representations on behalf of herself and her husband, as the Tenants of the Property.
5. The Applicant had provided, with the Application, copies of the Short Assured Tenancy Agreement between the parties, together with form AT5. They had also provided copies of the notice to quit and section 33 notice which had been served upon the Respondents, together with proof of service of these notices. The Applicant had provided evidence of service of a notice upon the Local Authority as required by Section 11 of the Homelessness etc (Scotland) Act 2003. The Tribunal was satisfied that all these documents and forms had been correctly and validly prepared in terms of the provisions of the Act, and procedures set out in the Act had been correctly followed and applied. The Respondents did not seek to challenge the service or the validity of the various notices.

6. Findings in Fact

- a. The parties entered into a tenancy agreement whereby the Applicant let the property to the Respondent by virtue of a Short Assured Tenancy.
 - b. The Applicant has served a notice under section 33 of the Act together with a notice to quit, which competently ended the contractual tenancy.
 - c. The Respondent has failed to vacate the property by the date set out in the notices.
 - d. The Short-Assured Tenancy has reached its ish.
 - e. Tacit relocation is not operating.
 - f. The Applicant has served a notice on the relevant local authority under section 11 of the Homelessness etc (Scotland) Act 2003.
7. Accordingly, the only matter for the Tribunal to determine was whether it is reasonable to grant the eviction order.
 8. Mrs Cochrane confirmed to the Tribunal that that the Applicant continued to seek an order for eviction. She explained that the Respondents’ monthly rent for the Property is currently £815 per month. The Applicant had lodged with the Tribunal a full rent statement showing all monthly rent due, together with

payments which had been made by the Respondents. From May 2022 to February 2023 the Respondents had made some payments to their rent account. However, payments made during that period did not meet the full rent due and did not clear arrears which had accrued. By February 2023 the arrears of rent had reached £2975. The Respondents failed to make any payment of rent for the period from March 2023 to September 2023 and in October 2023 they paid only £500. By October 2023 the accrued rent arrears had reached £8495. As at the date of this hearing the Respondents continued to have accrued arrears of rent of £8495. The Respondents had been persistently in arrears of rent from May 2022. The Applicant had been tolerant of the Respondents' failure to pay full rent and had allowed the Respondents various opportunities to clear rent arrears due. Mrs Cochrane confirmed that there had been regular contact with the Respondents throughout the period during which rent arrears had accrued. The Respondent had been encouraged to seek support and assistance in relation to the arrears accrued. It was further explained that the Respondent had made various offers to settle the arrears of rent due but had failed to meet the terms of the offers made. In all the circumstances the Applicant considered that they had acted with patience and understanding, but that the level of rent arrears had now reached more than 6 months rent and it was therefore reasonable for an order for eviction to be granted,

9. Mrs. Szczepanski confirmed that she accepted there were current rent arrears in the sum of £8495. She explained that the arrears of rent had accrued during a period when she was unwell and unable to work and during which period her husband's income had also been lower than normal. She explained that she is a self-employed driver for Amazon. She is now working again (following her period of ill health). She has been working again from January 2023 and is currently earning between £400 and £600 per week. Mrs. Szczepanski further explained that her husband is self-employed with his own delicatessen in the Inverness area. His profits are currently around £500 per week. Mrs. Szczepanski confirmed that the Respondent's 21-year-old son resides with them at the Property. He is currently completing an apprenticeship with a very low income, Mrs. Szczepanski explained that she considered the Respondents had regular outgoings in respect of their bills for energy, council tax and other property related outgoings of approximately £1000 per month. She further explained that Mr. Szczepanski was required to pay £500 per month as rent for his business property and he had accrued rental arrears of approximately £1000 for that property. Mrs. Szczepanski explained that she had sought advice and assistance from Citizens Advice on financial matters. She had enquired about the possibility of obtaining benefits as additional income but had been advised that she was not entitled to claim such benefits due to the level of the family's income. Mrs. Szczepanski indicated that she was taking steps to ensure payments would be made to the Landlord to clear the arrears of rent and to pay the ongoing rental liability.
10. Having considered the evidence presented by the landlord the Tribunal was satisfied that there was a sufficiency of evidence to establish that it is reasonable to grant an order of eviction. The Respondents have accrued significant arrears of rent and, despite the repeated requests of the Applicant,

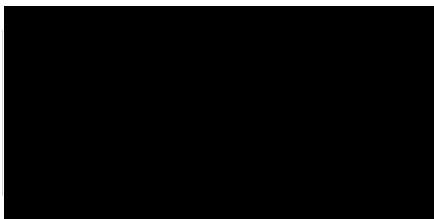
have failed to clear the arrears of rent. The Respondents financial position should be sufficient to allow current rent to be paid monthly, along with additional payments towards the arrears accrued, The Respondents have failed to make such payments. The Landlord has acted reasonably in allowing the Respondent opportunities to clear the arrears of rent due, but the Respondents have failed to maintain any agreement reached with the Applicant in that respect.

Decision

1. The Rules allow, at rule 17(4), for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. The Tribunal have determined to make a decision following the CMD given that there are no material disputes in relation to the facts of the case.
2. The Tribunal have determined to grant an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988. The order cannot be executed prior to 12 noon on the earlier of (a) the day following the end of a period of 6 months beginning with the day on which this order was granted, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022.

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.



**Andrew Cowan
Legal Member/Chair**

23rd October 2023