



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 Housing (Scotland) Act 1988 (“the 1988 Act”)

Chamber Ref: FTS/HPC/EV/23/4015

Property at 3A Allars Bank, Hawick, TD9 9EX (“the Property”)

Parties:

Mrs Lesley Thomson, 3 Gilston Cottages, Heriot, EH38 5YS (“the Applicant”)

Mr Daniel McKenzie, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondent in favour of the Applicant.

Background

- 1. The Applicant seeks an order for possession in terms of Section 33 of the 1988 Act. Two tenancy agreements, two AT5 Notices, a Notice to Quit, Section 33 notice and Section 11 Notice were lodged with the application.**
- 2. A copy of the application was served on the Respondent by Sheriff Officer at the property. Both parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 6 June 2023 and that they were required to participate.**
- 3. The CMD took place on 6 June 2023 at 2pm. The Applicant was represented by Mrs Tofts. The Respondent did not participate.**

4. The Tribunal noted that the application form indicates that the Respondent may not be residing at the property. However, no application for service by advertisement had been submitted. Ms Tofts told the Tribunal that the Applicant believes that the Respondent is not occupying the property. They manage other properties in the block and have spoken to other residents who have confirmed that he has not been seen. Following complaints from residents at the end of 2022 regarding smells from the property, they contacted the police who borrowed a key from the Applicant to investigate the complaints. They told Mrs Tofts that she was not to attend at the property. They investigated and found the property full of refuse and rotting food, which was the source of the smell. However, there was no evidence that anyone was living there. Prior to this there had been no response to calls and emails to the Respondent and no one answered the door when they visited. When payments from universal credit stopped in December 2022 or January 2023, they contacted the DWP. They were told that the Respondent had provided them with a change of address in connection with his claim. Mrs Tofts confirmed that the Respondent is the sole tenant and lived at the property alone.
5. The Tribunal noted that the Sheriff Officers had deposited the application at the property. As the Respondent appears to have moved out and be residing elsewhere, the application has not been validly served. The Tribunal determined that the CMD should be continued to a later date to allow for service of the application on the Tribunal website.
6. The parties were notified that a further CMD would take place on 22 August 2023. This was postponed at the request of the Applicant.
7. The application was served by advertisement on the Tribunal website. The CMD took place on 20 November 2023 at 10am by telephone conference call.

Case Management Discussion

8. Mrs Tofts advised the Tribunal that there has been no change since the last CMD. The Respondent has not been in touch and has paid no rent. He has not given notice or returned the keys. He now owes the sum of £3447.50. She said that the letting agent has been at the property on a couple of occasions. No one answered the door. They have also continued to write to the Respondent at the property but have noted a large built up of mail when they have visited.

Findings in Fact

9. The Applicant is the owner and landlord of the property.

10. The Respondent is the tenant of the property in terms of a short assured tenancy agreement.
11. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondents on 6 July 2023
12. The Respondent has abandoned the property and is living elsewhere. The Applicant does not know the Respondent's current address.
13. The Respondent previously resided at the property alone.
14. The Respondent has incurred rent arrears of £3447.50. Payments of universal credit to the rent account ceased in December 2022 when the Respondent informed the DWP that he was no longer residing at the property.

Reasons for Decision

15. The application was submitted with a two short assured tenancy agreements and AT5 Notices. The initial term of the tenancy was 20 July 2017 until 19 January 2018. A new agreement was signed on 19 January 2018 for the period of six months from that date until 19 July 2018, with a provision that it would continue thereafter on a month to month basis, if not terminated.
16. Section 32 of the 1988 Act states “(1) A short assured tenancy is an assured tenancy - (a) which is for a term of not less than 6 months; and (b) in respect of which a notice is served as mentioned in subsection (2) below. (2) The notice referred to in subsection (1)(b) above is on which – (a) is in such form as may be prescribed; (b) is served before the creation of the short assured tenancy; (c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under the tenancy; and (d) states that the assured tenancy to which it relates is to be a short assured tenancy.”
17. The Tribunal is satisfied that the tenancy agreement between the parties was for an initial term of 6 months and therefore meets the requirements of Section 32(1) of the 1988 Act. The Tribunal is also satisfied that an AT5 Notice was given to the Respondent prior to the creation of the tenancy. The second agreement meets the requirements of the savings provisions specified in Schedule 5 of the Private Housing Tenancies (Scotland) Act 2016. In the circumstances, the Tribunal determines that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act.
18. From the documents submitted with the application, the Tribunal is satisfied that the Applicant served a Notice to Quit and Section 33 Notice on the Respondent on 6 July 2023. The Notice to Quit called upon the Respondent to vacate the property on 19 September 2023, an ish date. The Notice contains the information prescribed by the Assured Tenancies (Notices to Quit Prescribed

Information) (Scotland) Regulations 1988 and complies with the terms of Section 112 of the Rent (Scotland) Act 1984. The Tribunal is satisfied that the Notice to Quit is valid and that the tenancy contract has been terminated. The Section 33 Notice was also served on 6 July 2023 and gave the Respondent 2 months notice that the Landlord wished to recover possession of the property. A Section 11 Notice was submitted with the application, with evidence that it was sent to the Local Authority. The Applicant has therefore complied with Section 19A of the 1988 Act.

19. Section 33 of the 1988 Act, (as amended by the Coronavirus (Recovery and Reform) (Scotland) Act 2022) states “(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; (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” Subsection 2 states “The period of notice to be given under subsection (1)(d) above shall be – (1) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period; (ii) in any other case, two months”. The Tribunal is satisfied that the tenancy has reached its finish and, as the Applicant has served a valid Notice to Quit, that tacit relocation is not operating. A valid notice in terms of section 33(d) has also been served on the Respondents, giving at least two months’ notice that the Applicant required possession of the property.
20. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession, in terms of Section 33(e) of the 1988 Act.
21. The Tribunal had regard to the following: -
 - (a) The Respondent has not resided at the property for about a year. The Police entered the property in December 2022, following complaints from neighbours about a smell from the property. They found the property to be unoccupied with bags of rubbish and rotting food causing the smell.
 - (b) The DWP have informed the Applicant that the Respondent is now claiming benefits from a different address but declined to provide the address.
 - (c) The Respondent has incurred rent arrears of £3447.50 and has paid no rent for 14 months.
 - (d) When he occupied the property, the Respondent resided there alone.
22. For the reasons specified, the Tribunal is satisfied that it would be reasonable to grant the application.

23. The Tribunal is satisfied that the Applicant has complied with the provisions of the 1988 Act and that it would be reasonable to grant the order.

Decision

24. The Tribunal determines that an order for possession of the property should be granted against the Respondent.

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.

J Bonnar

Josephine Bonnar, Legal Member

20 November 2023