



**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/23/2454

Re: Property at 17 Lothian Street, Hawick, TD9 9HD (“the Property”)

Parties:

**Mr John Rafferty, Mrs Aileen Rafferty, 7a Wilton Hill Terrace, Hawick, TD9 8BA
 (“the Applicants”)**

Mr Steven Watson, 17 Lothian Street, Hawick, TD9 9HD (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants were entitled to an order for possession of the property and the removal of the Respondent from the property.

Background

1. By application dated 24 July 2023 the Applicants’ representatives, Bannerman Burke Law, Solicitors, Hawick, applied to the Tribunal for an order for possession of the property under Section 33 of the Housing (Scotland) Act 1988. The Applicants’ representatives submitted a copy tenancy agreement, notice to quit and section 33 Notice with proof of service and Section 11 Notice with proof of service in support of the application.
2. By Notice of Acceptance dated 12 September 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 30 October 2023.

4. By email dated 6 December 2023 the Applicants representatives submitted further written representations to the Tribunal.

The Case Management Discussion

5. ACMD was held by teleconference on 7 December 2023. The Applicant Mr John Rafferty attended in person and was represented by Mr Steven Robertson from the Applicants' representatives and who also represented Mrs Aileen Rafferty. The Respondent did not attend nor was he represented. The Tribunal being satisfied that the Respondent had received proper intimation of the date and time of the CMD determined to proceed in his absence.
6. Mr Robertson advised the Tribunal that the parties had entered into a Short Assured Tenancy that had commenced on 18 November 2012 and endured for a period of 6 months and then continued from month to month thereafter. Mr Robertson explained that a Notice to Quit and Section 33 Notice had been sent to the Respondent by recorded delivery post on 18 May 2013 and provided that the tenancy would end on 18 July 2013. He said that a Section 11 notice had been sent to Scottish Borders Council. Mr Robertson went on to say that the only potential issue was that there could be two ish dates as the tenancy agreement stated that the tenancy was for a period of six months from 18 November 2012 which would mean an ish of 18 May 2013 but also said that the tenancy would end on 19 May 2013. Mr Robertson submitted that the ish could be argued either way but that he had concluded the correct date was the 18th of the month.
7. With regards to reasonableness Mr Robertson referred the Tribunal to the rent statement submitted with the written representations of 6 December. He said this showed that the Respondent currently owed £2080.00 in rent, the equivalent of eight months' rent. Mr Robertson said that the Respondent paid no rent for several months and would then pay a large amount to reduce the debt but always remained in debt. Mr Robertson said that this was causing the Applicants anxiety and stress and they had decided they wished to sell and get out of letting property.
8. In response to a query from the Tribunal Mr Robertson confirmed that the Respondent was a single young man with no dependants and no vulnerabilities.
9. Mr Rafferty said that he had four daughters one of whom was studying Veterinary Medicine at Liverpool University and he had to pay university fees for her of £9000.00 per year plus meet her accommodation costs. He said the Applicants needed to sell the property to raise capital to fund their daughter's education and also to fund another daughter's wedding next year. He confirmed that the property was the Applicants only rental property.
10. Mr Robertson asked the Tribunal to grant the order.

Findings in Fact

11. The parties entered into a Short Assured tenancy that commenced on 18 November 2012 and endured for a period of six months.
12. The Applicants wish to sell the property to raise capital to support their family.
13. The Respondent was served with a Notice to Quit and Section 33 Notice by recorded delivery post providing that the tenancy would end on 18 July 2023.
14. The Respondent has remained in occupation of the property.
15. The Respondent has accrued rent arrears amounting to £2080.00.
16. Intimation of the proceedings by way of a Section 11 Notice was sent by the Applicants' representatives to the Scottish Borders Council.

Reasons for Decision

17. The Tribunal was satisfied from the written representations and documents produced together with the oral submissions that the parties entered into a Short Assured Tenancy that endured for a period of six months from 18 November 2012 and from month to month thereafter. The Tribunal acknowledged that there was some confusion over the issue with two interpretations being possible. The Tribunal took account of the decision in *Morrisons Executors v Rendall* 1989 SLT (Land Ct) 89 in reaching its decision and accepted that the Notice to Quit and Section 33 Notice had been validly served on the Respondent. The Tribunal also took account of the fact that despite being given an opportunity to submit written representations and to attend the CMD the Respondent had chosen to do neither. In reaching a decision on whether it was reasonable to grant an order for possession the Tribunal took account of the information it had about the Respondent's circumstances and the high level of rent arrears. The Tribunal also took account of the information provided by Mr Rafferty about his family circumstances and his need to raise capital from the sale of the property and the further information provided on behalf of the applicants by Mr Robertson. In the circumstances the Tribunal was satisfied that it was reasonable to grant the order which would be subject to the Cost of Living (Tenant Protection) (Scotland) Act 2022 and would not come into effect for a period of six months or until the regulations were suspended or revoked whichever was the earlier.

Decision

18.

The Tribunal having carefully considered the information before it and being satisfied it had sufficient information to allow it to make a decision without the need for a hearing finds the Applicants entitled to an order for possession of the property and the removal of the Respondent from the property.

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

7 December 2023

Date