

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/EV/23/3246

Re: Property at 15 Sorn Green, Glenrothes, Fife, KY7 4SF (“the Property”)

Parties:

Mr George Quipp, 1 Wemyss Court, Glenrothes, Fife, KY7 4SX (“the Applicant”)

Mrs Rebecca Dean, 15 Sorn Green, Glenrothes, Fife, KY7 4SF (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 15 Sorn Green, Glenrothes, Fife, KY7 4SF under Section 33 of the Housing (Scotland) Act 1988 be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 14 September 2023, the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for recovery of possession the Property in terms of Rule 66 the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a copy of the front page of Short Assured tenancy commencing 11 September 2015 between the Applicant on the one part and Stephen Dean and Rebecca Dean, the Respondent, on the other part, an AT5, a Notice to Quit and Section 33 Notice dated 27 June 2023 together with a proof of delivery signed by the Respondent on 1 July 2023, bank statements and a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 to Fife Council with email dated 14 September 2023.
3. On 14 November 2023 the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 27 November 2023 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 17 January 2024. The Tribunal advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 19 February 2024. This paperwork was served on the Respondent by William Wywalec, Sheriff Officer, Kirkcaldy on 3 January 2024 and the Execution of Service were received by the Tribunal administration.
5. On 19 January 2024 the Tribunal issued a Notice of Direction in terms of which the Applicant was to provide an up to date rent statement and correspondence between the Applicant and the Respondent in relation to the payment of rent or arrears and the arrangement that the Respondent would pay weekly rent. These documents were to be lodged by 5 February 2024.
6. On 4 February 2024 the Applicant forwarded a rent statement to 11 January 2024 and text messages between his wife, Lorna Quipp and the Respondent from 29 May 2021 to 25 June 2023.

Case Management Discussion

7. The Tribunal proceeded with the CMD on 19 February 2024 by way of teleconference. The Applicant appeared on his own behalf with his wife Lorna Quipp. There was no appearance by or on behalf of the Respondent despite the CMD starting five minutes late. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in her absence. The case was heard together with an application for eviction under case reference FTS/HPC/CV/23/3342.
8. The Tribunal had before it a copy of the front page of Short Assured tenancy commencing 11 September 2015 between the Applicant on the one part and Stephen Dean and Rebecca Dean, the Respondent, on the other part, an AT5, a Notice to Quit and Section 33 Notice dated 27 June 2023 together with a proof of delivery signed by the Respondent on 1 July 2023, bank statements, a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 to Fife Council with email dated 14 September 2023, a rent statement to 11 January 2024 and text messages between the Applicant’s wife, Lorna Quipp and the

Respondent from 29 May 2021 to 25 June 2023. The Tribunal noted the terms of these documents.

9. Mr Quipp asked for an Order of eviction. He explained that he did not expect to get any money from the Respondent. Arrears had increased from 11 January 2024 as shown in the rent statement. They were now £6665.56. He had heard nothing from the Respondent. He had sent her a copy of the papers he submitted to the Tribunal. The Tribunal noted the rent statement showing arrears to 11 January 2024 of £6200.56 and that the last payment to account was £107 on 2 June 2023. The Tribunal also noted the monthly rent was £465.
10. Mrs Quipp explained that she had had the most contact with the Respondent as she looked after the properties they let out. She explained the Respondent had been on statutory sick pay for the last 6 months but was about to go back to work. She understood the Respondent worked full time but was not sure what her job was. The Respondent had asked to pay rent weekly as she and her partner were paid weekly, Mrs Quipp referred to the text messages and explained she did not want to see anyone struggling so had tried to help the Respondent by being understanding with regard to the arrears. As well as the rent arrears there were other issues with the tenancy. Neighbours had contacted Mrs Quipp about noise and dogs barking. The PDSA had been involved.
11. In answer to questioning by the Tribunal regarding the rent arrears Mrs Quipp explained that up until 2021 the tenancy had been conducted satisfactorily. Mrs Quipp received a text from the Respondent in 2021 to advise that her husband who was the joint tenant had left. It was at that stage that the arrears started to arise. She understood the Respondent had taken advice from CAB regarding getting benefits, but she had been advised she was not entitled to any benefits as she earned more than the threshold. The Council case worker who had been assigned to help the Respondent after the proceedings had been raised had urged the Respondent to pay her rent. Mrs Quipp understood the Respondent's boyfriend lived in the Property or at least stayed there most nights. She understood from a neighbour that the Respondent's boyfriend had his own property.
12. The Tribunal queried whether the Applicant knew when the AT5 had been served on the Respondent noting it was undated but initialled by the Respondent and Stephen Dean, the Respondent's husband. Mrs Quipp explained that the tenancy was set up by Your Move. The Tribunal noted the terms of the first page of the tenancy agreement on Your Move headed paper which also made mention of the AT5. The Tribunal also noted this had been initialled by the Respondent and Stephen Dean.
13. Mrs Quipp explained they wanted to gift the Property to her 20 year old grandson who occasionally stayed with them due to issues with his stepfather.

Findings in Fact

14. The Applicant entered into a Short Assured Tenancy Agreement commencing 11 September 2015 with Stephen Dean and Rebecca Dean, the Respondent.
15. The Respondent and Stephen Dean received an AT5 which was initialled by both of them.
16. In terms of clause 1.8 of the Short Assured Tenancy Agreement the tenancy commenced 11 September 2015 until 10 March 2016, the termination date. Parties agreed that the agreement would continue thereafter on a monthly basis until terminated.
17. In terms of clause 1.9 of the Short Assured Tenancy Agreement the Respondent agreed to pay rent of £465 per month. The rent has not increased since the commencement of the tenancy and is still £465 per month.
18. The Respondent started to accrue arrears from 2021. The Respondent has been in arrears of rent ever since. The Respondent is in arrears of £6665.56.
19. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the Housing (Scotland) Act 1988 both dated 27 June 2023 on the Respondent by Recorded Delivery. They were received by the Respondent on 1 July 2023. The Notice to Quit and the Section 33 Notice expired on 10 September 2023.
20. The Short Assured Tenancy reached its end as at 10 September 2023.
21. *Tacit relocation* is not operating. The contractual Short Assured Tenancy had been brought to an end on 10 September 2023.
22. The Applicant has received complaints of noise at the Property.
23. The Applicant wants to gift the Property to his grandson.
24. The Respondent remains in the Property. Stephen Dean left the Property in or about 2021. The Respondent is the sole tenant.
25. The Applicant served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on Fife Council on 14 September 2023.

Reasons for Decision

26. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the oral submissions made by the Applicant and Mrs Quipp. The Tribunal concluded that the Applicant was entitled to seek repossession of the Property under Section

33 of the Housing (Scotland) Act 1988. There was a properly constituted Short Assured Tenancy with the Respondent. The Tribunal was satisfied that the statutory provisions of Section 33 of the Housing (Scotland) Act 1988 had been met namely that the Short Assured Tenancy had reached its end (termination date) on 10 September 2023; the Notice to Quit brought the contractual Short Assured Tenancy to an end on 10 September 2023 and that the Applicant had given the Respondent notice in terms of Section 33(1)(d) of the Housing (Scotland) Act 1988 stating that possession of the property was required by 10 September 2023.

27. The terms of Section 33 of the Housing (Scotland) Act 1988 would normally entitle the Applicant to a right of mandatory repossession of the Property. In terms of Schedule 1, paragraph 3 (4) of the Coronavirus (Scotland) Act 2020 the Applicant also has to satisfy the Tribunal that it is reasonable to evict. In determining whether it is reasonable to grant the order the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal considered that the Applicant's wife had tried very hard to accommodate the Respondent in relation to payment of the rent. The Respondent had not paid rent since June 2023 and there had been complaints of noise at the Property. The Applicant could not be expected to bear the arrears particularly when the Respondent was in full time employment. The Tribunal also considered the Respondent had not engaged with the Tribunal process. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.

28. In the circumstances the Tribunal considered that in terms of Section 33 of the Housing (Scotland) Act 1988 as amended it was reasonable to grant an eviction order.

Decision

29. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

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.

Shirley Evans

19 February 2024

Legal Chair

Date