



**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/23/4278**

**Re: Property at The Bungalow, 3 Sanquhar Mains, Forres, IV36 2RR (“the Property”)**

**Parties:**

**Mr Peter Bruce, Sanquhar Mains Farm, Forres, IV36 2RR (“the Applicant”)**

**Janet Gallagher, The Bungalow, 3 Sanquhar Mains, Forres, IV36 2RR (“the Respondent”)**

**Tribunal Members:**

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

**Decision**

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 The Bungalow, 3 Sanquhar Mains, Forres, IV36 2RR 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 his goods, gear and whole belongings forth 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. This is an action for recovery of possession of the Property raised in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
2. The application was accompanied by a copy of a short assured tenancy agreement and AT5 dated 20 September 2016 between the parties, a letter

to the Respondent dated 19 September 2023, a Notice to Quit and Section 33 Notice dated 12 September 2023, execution of service dated 13 September 2023, a Royal Mail Recorded Delivery proof of delivery dated 13 September 2023, a rent statement to November 2023, a letter of authority from the partners and trustees of the firm of P&S Bruce dated 21 November 2023, a copy of the Applicant's title to the Property and an email and Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 to Moray Council dated 29 November 2023.

3. On 18 April 2024, the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 29 May 2024. The Respondent required to lodge written submissions by 9 May 2024. This paperwork was served on the Respondent by Robert White, Sheriff Officer, Inverness on 22 April 2024 and the Execution of Service was received by the Tribunal administration.
4. On 9 May 2024, Messrs Cockburn solicitors lodged a letter with the Tribunal indicating that they would represent the Respondent and that they were obtaining medical evidence.
5. On 21 May 2024, the Applicant's solicitor lodged an up to date rent statement.
6. On 28 May 2024, the Respondent's solicitor lodged a letter from the Respondent's GP dated 28 May 2024.

### **Case Management Discussion**

7. The Tribunal proceeded with the CMD on 29 May 2024 by way of teleconference. The Applicant was represented by Mr Swarbrick, Messrs Swarbrick, solicitors. The Respondent was represented by Mr Adams from Messrs Cockburn, solicitors. The case was heard with another application for eviction under reference FTS/HPC/EV/24/4277.
8. The Tribunal had before it the short assured tenancy agreement and AT5 dated 20 September 2016 between the parties, the letter to the Respondent dated 19 September 2023, the Notice to Quit and Section 33 Notice dated 12 September 2023, the execution of service dated 13 September 2023, the Royal Mail Recorded Delivery proof of delivery dated 13 September 2023, the letter of authority from the partners and trustees of the firm of P&S Bruce dated 21 November 2023, the copy of the Applicant's title to the Property, the email and Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 to Moray Council dated 29 November 2023, the up to date rent

statement and letter from the Respondent's GP dated 28 May 2024. The Tribunal considered the terms of these documents.

9. The Tribunal queried why the Applicant had lodged two applications for eviction, one under Rule 65 of the Regulations and one under Rule 66. Mr Swarbrick explained that he had lodged two applications as he wanted to ensure all legal aspects were covered. When applications were heard in the Sheriff Court, a Pursuer could do so under one action, but the Tribunal Rules provided that two actions were necessary, one for recovery of possession of an assured tenancy and the other for a short assured tenancy. The Tribunal queried whether it could grant two orders for eviction. Mr Swarbrick confirmed that he wished to proceed with the action under Rule 65. However after hearing Mr Cockburn, he confirmed he was in fact wishing to proceed under Rule 66. He would seek a continuation of the other action which proceeded under Rule 65.
  
10. Mr Swarbrick submitted that the short assured tenancy was properly constituted and that the requisite Notice to Quit and Section 33 Notice had been served on the Respondent on 12 September 2023 to the next ish date of 20 November 2023. Accordingly the contractual tenancy was at an end, tacit relocation was not operating and the Section 33 Notice had been served.
  
11. Mr Swarbrick addressed the Tribunal on reasonableness and referred to the the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. Although he had only lodged his letter of 19 September 2023 inviting the Respondent to make an arrangement to clear the arrears and signposting her to advice agencies, he submitted that the Applicant's agent had sent pre-action letters regarding the arrears to the Respondent on 2 and 16 August 2023. The letter of 2 August 2023 also mentioned the need for a repair to the immersion heater as there was an issue with heating water. There was no mention of the Respondent withholding rent. Although arrears had come down slightly, there was no repayment plan in place.
  
12. Mr Adams explained that he had instructions to concede that an Order under Section 33 of the Housing (Scotland) Act 1988. However with reference to the GP letter he submitted that his client had very particular needs. She had particular issues with engagement with others. The Property was isolated. The Respondent has made enquiries with the Local Authority, investigated

options in the private sector. However with her anxiety about engaging with other people and her social anxiety she would not be able to manage being rehoused amongst other people. The Respondent wanted a civilised departure. In the circumstances he moved that if an Order be granted, that extract be suspended for a period of two months. That would give the Respondent an opportunity to work with the Local Authority to explore her housing options.

13. Ms Williams asked Mr Swarbrick what financial implications there was for his client with the arrears. Mr Swarbrick had limited information. He understood the farm income fluctuated depending on the season. On further questioning he explained that when the Respondent started to pay some amounts to the arrears the Applicant had not felt comfortable to approach her to make a formal arrangement. The Respondent had asked him to keep away from the Property and the Applicant was respecting the Respondent's wishes by not doing so. There had been issues with arranging access but it was clear the Respondent was uncomfortable with any interaction.

14. On being questioned by Ms Williams, Mr Adam confirmed the Respondent worked as a cleaner. It did not surprise him that the Respondent had asked the Applicant not to approach her as she certainly wanted to be left alone. He had no information regarding any repairs or the suggestion that she may have withheld rent. If the Order were to be granted by the Tribunal, the Respondent would need additional time to secure suitable alternative accommodation.

### **Reasons for Decision**

15. 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 Mr Swarbrick and Mr Adams at the CMD. 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 term (termination date); the Notice to Quit brought the contractual Short Assured Tenancy to an end, 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 20 November 2023.

16. 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 gave weight to the fact the Respondent was taking active steps to secure alternative accommodation and that she conceded she would have to leave the Property. It appeared that the relationship between the parties had broken down or at the very least was strained. The Applicant faced financial uncertainty. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.
17. 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**

18. The Tribunal granted an order for repossession suspended for two months to allow the Respondent further time to secure suitable alternative accommodation to suit her needs. 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.**

# S Evans

29 May 2024

Legal Member

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Date