



**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/24/0235**

**Re: Property at 5 Rose Lane, Kelso, TD5 7AP (“the Property”)**

**Parties:**

**Mr Robin Thomson, Cakemuir Cottage, Nenthorn, KELSO, TD5 7RY (“the Applicant”)**

**Mr Aaron Rowe, 5 Rose Lane, Kelso, TD5 7AP (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Tony Cain (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 5 Rose Lane, Kelso, TD5 7AP 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 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. 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 tenancy agreement dated 30 October and 7 November 2013 between the Applicant, the Respondent

and Mrs Helen Rowe, rent increase letters dated 7 January 2022 and 7 July 2023, a letter to the Respondent dated 21 October 2023, a Notice to Quit and Section 33 Notice dated 1 November 2023, Sheriff Officer's execution of service dated 3 November 2023, a rent statement to 7 November 2023 and a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 to Scottish Borders Council dated 15 January 2024.

3. On 2 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 9 May 2024. The Respondent required to lodge written submissions by 23 April 2024. This paperwork was served on the Respondent by Christopher Andrew, Sheriff Officer, Edinburgh on 3 April 2024 and the Execution of Service was received by the Tribunal administration.
4. The Respondent did not lodge any written representations.

### **Case Management Discussion**

5. The Tribunal proceeded with the CMD on 9 May 2024 by way of teleconference. The Applicant appeared and represented himself. His brother Iain Thomson was also in attendance. There was no appearance by or on behalf of the Respondent despite the teleconference starting 5 minutes late. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence. The case was heard with an application for eviction under reference FTS/HPC/CV/23/3893.
6. The Tribunal had before it the tenancy agreement dated 30 October and 7 November 2013 between the Applicant, the Respondent and Mrs Helen Rowe, rent increase letters dated 7 January 2022 and 7 July 2023, a letter to the Respondent dated 21 October 2023, the Notice to Quit and Section 33 Notice dated 1 November 2023, Sheriff Officer's execution of service dated 3 November 2023, the rent statement to 7 November 2023, and the Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 to Scottish Borders Council dated 15 January 2024. The Tribunal considered the terms of these documents.
7. The Tribunal noted that there was no AT5 with the papers. The Applicant explained that he had served this on the Respondent prior to the Short Assured Tenancy being entered into. The Tribunal asked the Applicant to send this to the Tribunal during the course of the CMD. This was received by the Tribunal. The Tribunal also then had before it an AT5 signed by the

Applicant on 30 October 2013. This was also signed by the Respondent on 7 November 2013. The Tribunal considered the AT5 with the tenancy agreement.

8. Mr Thomson explained he was seeking an order for eviction. The Respondent had failed to pay rent and was in arrears of £7980.00. No rent had been paid since 1 September 2023. The Applicant explained he had made various attempts to get the Respondent to engage including texts and emails. He had made three visits to the Property and believed that the Respondent had refused to answer the door on occasions although the Applicant believed he was at home. A local councillor had also been in contact with the Applicant as he had received complaints from the Respondent's neighbours about the state of the garden at the Property. Mr Thomson explained he was looking to retire and wished to sell the Property. The Respondent had moved into the Property with his wife and two daughters, but they had moved out after the Respondent and his wife separated. The Applicant believed Mr Rowe lived in the Property alone and had at one stage been employed as a chef. The Applicant explained he had also attempted to get direct payments of rent from the DWP, but that had been unsuccessful.

### **Findings in Fact**

9. The Applicant entered into a Short Assured Tenancy Agreement dated 30 October and 7 November 2013 with the Respondent and Mrs Helen Rowe. The Applicant served an AT5 on the Respondent on 30 October 2013. The Respondent acknowledged receipt of the AT5 and signed it on 7 November 2013.
10. In terms of the Short Assured Tenancy Agreement the tenancy commenced on 7 November 2013 and continued until 8 May 2014 both dates inclusive. Parties agreed that the tenancy would continue thereafter on a monthly basis until terminated.
11. Helen Rowe is no longer a tenant having left the Property after she and the Respondent separated.
12. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the Housing (Scotland) Act 1988 both dated 1 November 2023. These were served on the Respondent by Sheriff Officer on 3 November 2023. The Notice to Quit and the Section 33 Notice expired on 8 January 2024.
13. The Short Assured Tenancy reached its end as at 8 January 2024.

14. *Tacit relocation* is not operating. The contractual Short Assured Tenancy had been brought to an end on 8 January 2024.
15. The Respondent is in arrears of rent of £7980. The last payment of rent was on 1 September 2023.
16. The Applicant wishes to sell the Property to help fund his retirement.
17. The Respondent lives in the Property alone.
18. The Applicant served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on Scottish Borders Council on 15 January 2024.

### **Reasons for Decision**

19. 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 Thomason 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 ish (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 8 January 2024.
20. 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 Respondent being in substantial arrears and that he had not been in contact with the Applicant to make any arrangement to clear these. Further the Tribunal gave weight to the Applicant's wish to sell the Property. The Tribunal considered that Mr Rowe had not opposed the application and lived alone at the Property. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.
21. 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**

22. 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.**

**9 May 2024**

**Legal Member**

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**Date**