



**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/23/4493**

**Re: Property at G2/43 ERSKINE STREET, DUNDEE, DD4 6RJ (“the Property”)**

**Parties:**

**Mr Garry Mortimer, 11 VICTORIA STREET, NEWPORT ON TAY, FIFE, DD68DJ (“the Applicant”)**

**Mr Connor McKay, Ms Dawn Myzor, G2/43 ERSKINE STREET, DUNDEE, DD4 6RJ (“the Respondent”)**

**Tribunal Members:**

**Anne Mathie (Legal Member) and Gerard Darroch (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 repossession of the Property be granted.**

**Background**

1. An application was lodged dated 9 December 2023 in terms of Rule 66 of the Chamber Rules being an application for possession on termination of a short assured tenancy.
2. Along with the application form the Applicant lodged the following:
  - Notices to Quit
  - Section 33 Notices
3. The Tribunal contacted the Applicant on 14 December 2023 asking for the following information:
  - The tenancy agreement or, if not available, as much information about the tenancy as possible;
  - The notice by the Landlord that the tenancy is a short assured tenancy (“AT5”)

- Evidence of the notice given to the tenant under section 33(1)(d) of the 1988 Act being served by the landlord on the tenant;
  - Evidence of the notice to quit being served by the landlord on the tenant;
  - A copy of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003 (if applicable).
  - Evidence of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003 (if applicable) being provided to the local authority.
4. The Applicant replied by email dated 15 December 2023 with a copy of the tenancy agreement and certificates of execution of service of the notices by Sheriff Officers. He advised that the s11 were being dealt with by Dundee Council and would be with Tribunal shortly.
  5. Subsequently the Applicant emailed in with a copy of the section 11 Notice and proof of having emailed it to the local authority.
  6. The Tribunal emailed the Applicant again on 17 January 2024 asking for a copy of the AT5 and confirmed that the Tribunal required to assess the reasonableness or otherwise of granting an eviction order even in a Rule 66 application and requested the reasons for the eviction application.
  7. The Applicant emailed a copy of the AT5 to the Tribunal on 23 January 2024 and submitted reasons for the eviction application by email dated 26 January 2024.
  8. The application was accepted and scheduled for a case management discussion on 7 June 2024. Details of the application and the case management discussion were served on the Respondents who were advised that they were required to submit any written representations by 23 May 2024. No written representations have been received.
  9. The Respondents were also advised:
 

*“The Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision on the application which may involve making or refusing a payment order. If you do not take part in the case management discussion, this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.”*

### Case Management Discussion

10. The case management discussion took place today by teleconference. The Applicant attended. The Respondents did not. The Applicant advised that he had bought the Property in 2015. He had rented it to the Respondents since that time. Four of the Respondents children live with them in the Property which is a two bedroom flat. He believes that the four children are under eight years old. The Applicant thinks the Respondents require to be rehoused. There have been a number of issues. The Respondents emailed the Applicant last year

asking to be evicted as they have been asking to be rehoused by Dundee Council for a long time but nothing is happening. The Applicant confirmed that he wishes to sell up and retire from being a landlord. He will be 67 in August. He has health issues. He is looking to move house. He has carried out a lot of work to the Property but it keeps getting “trashed”. He has an electrician, joiner and plumber who do work for him but they struggle to access the Property to carry out necessary repairs. In 2022 Aberlour Dundee Services were involved with the tenancy. They sent a list of things that required to be addressed. He has put in a new kitchen and a new boiler. The Applicant confirmed that the Property is the only one he rents out. He used to have a Property in Falkirk which he rented out but he sold that three years ago. He has no energy to keep being a landlord. He advised that the Respondents carried out dubious business dealings and this has caused trouble for the neighbours. The Applicant hadn't increased the rent since 2015 and was still only charging £450 per month. He is paid directly by Universal Credit. The Respondents are not gainfully employed and claim benefits. If required, the Applicant would be able to provide a copy of the email from the tenants asking to be evicted and would be able to provide lots of evidence from the tradespeople who had carried out work to the flat. A lot of the issues with the Property such as doors being kicked in and damages to sockets were not normal wear and tear. The Property was overcrowded and unsuitable for 2 adults and 4 children to live in.

### Findings in Fact

11. The Tribunal made the following findings in fact:

- I. Parties entered into a short assured tenancy agreement from 22 November 2015 until 22 May 2016 which would continue on a monthly basis thereafter
- II. An AT5 was provided prior to the commencement of the tenancy;
- III. Valid section 33 Notices and Notices to Quit were served on the Respondents by Sheriff Officers;
- IV. The rent payable in terms of the tenancy agreement is £450 per calendar month and this hasn't increased since the commencement of the tenancy

### Reasons for Decision

13. The Tribunal took into account all the written submissions and evidence before it and the oral submissions from the Applicant today. There was nothing challenging the Applicant's position. The Tribunal required to look at the reasonableness of the eviction order being granted. The Tribunal gave considerable weight to the fact that the Respondents had requested to be evicted and that their current living arrangements were unsuitable. The Applicant is soon to be age 67 and has health issues. This is the only Property he currently rents out and he wishes to retire from being a Landlord. In all the circumstances, it is reasonable that the repossession order be granted in respect of the Property.

Decision

14. That the order for recovery of possession of the Property be granted.

**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.**

Anne Mathie

7<sup>th</sup> June 2024

Legal Member/Chair

Date