



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 66 of the Procedure Rules.**

**Chamber Ref: FTS/HPC/EV/24/0241**

**Re: 31 Pilton Place, Edinburgh, EH5 2EU ("the Property")**

**Parties:**

**Kevin Dempsey residing at 108/3, Atholl View, Prestonpans, EH32 9FL ('the Applicant')**

**Simone Callaghan, TC Young, Solicitors, Glasgow ('the Applicant's Representative')**

**Brian Moore residing at 31 Pilton Place, Edinburgh, EH5 2EU ('the Respondent')**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal')**

**Tribunal Member: Jacqui Taylor (Legal Member) Helen Barclay (Ordinary Member)**

## **1. Background**

The Applicant applied to the Tribunal for eviction/ possession of the Rented Property in terms of Rule 66 of the Procedure Rules. The application was 17<sup>th</sup> January 2024. The application concerns eviction proceedings in relation to a short assured tenancy of the Property in terms of section 33 of the Housing (Scotland) Act 1988 and was in the following terms:

*'On 18<sup>th</sup> September 2023 the Applicant served upon the Respondent a Notice to Quit. In terms of the Notice to Quit the Applicant gave notice to the Respondent that he was required to remove from the Property on or before 19<sup>th</sup> November 2023. On 18<sup>th</sup> September 2023 the Applicant served upon the Respondent Notice under section 33(1)(d) of the Housing (Scotland) Act 1988 stating that they required possession of the Property as at 19<sup>th</sup> November 2023.*

*The Short Assured Tenancy Agreement between the parties had reached its end as at 19<sup>th</sup> November 2023. Tacit relocation is not operating. No contractual tenancy is in*

*existence. The Applicant has complied with the terms of section 33(1) of the Housing (Scotland) Act 1988.*

*In terms of reasonableness the Property is subject to a mortgage. The mortgage costs are significantly higher than the rental charge. The Applicant requires to use personal savings in order to cover the additional costs. The Applicant now requires to sell the let Property due to the mortgage and tax liabilities exceeding the rental income.*

*In all the circumstances it is reasonable that an order for repossession should be granted.'*

2. Documents lodged with the Tribunal were:-

2.1 The Short Assured Tenancy Agreement between the parties. The period of the tenancy was from 18<sup>th</sup> May 2013 to 19<sup>th</sup> November 2013 and month to month thereafter.

2.2 AT 5 dated 13<sup>th</sup> May 2013.

2.3 Section 33 Notice dated 10<sup>th</sup> September 2023 giving notice to the Tenant to vacate the Property on or before 19<sup>th</sup> November 2023.

2.4 A copy of the Notice to Quit dated 10<sup>th</sup> September 2023 giving the Tenant formal notice to quit the Property by 19<sup>th</sup> November 2023.

2.5 A Certificate of Service by Alexander Horne, Sheriff Officer confirming that he served the Section 33 Notice and Notice to Quit on the Respondent on 18<sup>th</sup> September 2023.

2.6 A copy of the Section 11 Notice addressed to City of Edinburgh Council.

2.7 An email dated 17<sup>th</sup> January 2024 sending the section 11 notice to Edinburgh City Council.

3. By Notice of Acceptance by Helen Forbes, Convener of the Tribunal, dated 15<sup>th</sup> February 2024, she intimated that she had decided to refer the application (which application paperwork comprises documents received on 17<sup>th</sup> January 2024) to a Tribunal.

#### **4. Case Management Discussion**

4.1 This case called for a Case Management Discussion (CMD) Conference call at 14.00 on 31<sup>st</sup> May 2024.

The Applicant and his solicitor, Simone Callaghan attended.

The Respondent did not attend. The Respondent had been served with notice of the CMD by Dale Barrett, Sheriff Officer on 23<sup>rd</sup> April 2024. The Tribunal were satisfied that the requirements of Tribunal Rule 29 had been met.

4.2 No written responses had been received from the Respondent.

4.3 Simone Callaghan and the Applicant made the following oral representations to the Tribunal:

4.3.1 The required Notice to Quit and Section 33 notice has been served on the Respondent and the required period of notice has been given.

4.3.2 There is no continuing contractual tenancy in place.

4.3.3 The Applicant's mortgage payments for the Property are £858.31 per month. This exceeds the monthly rent payments of £650. In addition, the Applicant has annual insurance costs of £254. The Applicant's costs in relation to the Property exceed the

rental income. The Applicant has been funding the shortfall from savings but needs to sell the Property to reduce ongoing costs.

4.3.4 The Applicant was contacted by the Local Authority Environmental Protection Scheme on 13<sup>th</sup> September 2023. They advised him that there was a bad odour emanating from the Property due to animals being on site and cannabis. In addition, there were empty bottles at the side of the Property which are attracting rats to neighbouring gardens.

4.3.5 Miss Callaghan advised that she understands that the Respondent has contacted the Local Authority in relation to his rehousing but has been advised to wait until the eviction order is issued.

4.3.6 Miss Callaghan advised that the Respondent resides in the Property with his partner and there are no other occupants of the Property. The Property has not been adapted for disabilities.

4.3.7 The Applicant advised that there are no rent arrears. He owns six other rental properties and will eventually sell them.

## **5. The Tribunal made the following findings in fact:**

5.1 The Applicant is owner of the Property in terms of Land Certificate title number MID124722.

5.2 The Landlord named on the lease and the Registered Landlord of the Property is Kevin Dempsey.

5.3 The Tenant named on the short assured tenancy agreement is Brian Moore.

5.4 The original term of the Tenancy was from 18<sup>th</sup> May 2013 to 19<sup>th</sup> November 2013 and month to month thereafter.

5.5 The rent due in terms of the lease was £650 per calendar month.

5.6 The Notice to Quit and Section 33 Notice were served on the Respondent on 18<sup>th</sup> September 2023.

5.7 Following service of the Notice to Quit the contracted tenancy ended.

5.8 There is no ongoing contractual tenancy in place.

## **6. Requirements of Section 66 of the Procedure Rules.**

**(a)** The Tribunal confirmed that the application correctly detailed the requirements of section 66 of the Procedure Rules namely:-

- (i) the name, address and registration number of the Landlord.
- (ii) the name and address of the Landlord's representative.
- (iii) the name and address of the Tenant.
- (iv) the possession grounds that apply.

**(b)** The Tribunal confirmed that the application had been accompanied by the documents specified in Section 66(b) of the Procedure Rules:

- (i) The Tenancy Agreement.
- (ii) A copy of the AT5.
- (iii) A copy of the Section 33 Notice.
- (iii) A copy of the notice to quit served by the Landlord on the Tenant.
- (iv) The required notice giving City of Edinburgh Council notice of the proceedings under section 11 of the Homelessness etc Scotland Act 2003.

The Tribunal were satisfied that the Section 33 Notice and the Notice to Quit were valid. The Section 33 Notice gave the Respondent in excess of the required period of two months notice and the Notice to Quit gave the Respondent in excess of forty days notice. The Notice to Quit was in correct form and gave the Respondent notice that the lease was terminating at the ish date (19<sup>th</sup> November 2023).

**(c)** The Tribunal confirmed that the application form had been electronically signed and dated by the Landlord's agents as required by Section 65(c) of the Procedure Rules.

## **7. Decision.**

7.1 The Tribunal were satisfied that the requirements of section 33 have been met, namely that:

- (i) The Short assured Tenancy has reached its ish.
- (ii) That tacit relocation is not operating.
- (iii) That no further contractual tenancy is in existence.
- (iv) That the Landlord has given to the Tenants notice stating that he requires possession of the Property. In terms of section 33(2) the period of notice is two months.

7.2 The Tribunal were mindful of the decision of Lord Greene in the case of *Cummings v Dawson* (1942) 2 All ER 653 on matters to consider when determining reasonableness:

*'In considering reasonableness... it is my opinion, perfectly clear that the duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad, common sense way as a man of the world, and to come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or more weight, others may be decisive.'*

The Tribunal found that it was reasonable for the eviction order to be granted given the fact that the mortgage and insurance costs of the Property incurred by the Applicant exceed the rental payments he receives from the Respondent; the fact that the Applicant has been advised by Environmental Protection Services of their concerns about the Respondent's use of the Property, the fact that the Respondent has applied to the Local Authority for rehousing and also the fact that the Respondent has not provided any written representations.

**7.3 The Tribunal determined that the requirements of section 33(1) of the Housing (Scotland Act) 1988 had been complied with and made an order for possession of the Property.**

## **8. 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.**



J.Taylor

**Legal Member**

---

**31<sup>st</sup> May 2024**