



**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 (“the 1988 Act”) and Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)**

**Tribunal Ref: FTS/HPC/EV/23/3577**

**Property Address: 3D Lord Gambier Wharf, Kirkcaldy, Fife, KY1 2SH**

**Applicant: Mr Christopher Barker, Welland House, Mill Road, Seaton, Oakham**

**Applicant’s Representative: Martin & Co Kirkcaldy, 93 St Clair Street, Kirkcaldy, Fife, KY1 2BS**

**Respondent: Mr Imran Kashaf, 3D Lord Gambier Wharf, Kirkcaldy, Fife, KY1 2SH**

**Tribunal Members:**

**Ms. Susanne L M Tanner Q.C. (Legal Member)  
Mr. Ahsan Khan (Ordinary Member)**

## **Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) (i) was satisfied in terms of Section 33 of the 1988 Act that the short assured tenancy for the Property has reached its end; tacit relocation is not operating; no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and the Applicant has given to the Respondent two months’ notice stating that they require possession of the house; (ii) that it was reasonable to make an order for possession in the circumstances of the case; and (iii) made an order for possession in terms of Section 33 of the 1988 Act.**

**The decision of the tribunal was unanimous.**

## Statement of Reasons

1. The Applicant's Representative made an application to the tribunal on 15 February 2024, in terms of Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
2. The Applicant seeks the Respondents' eviction from the Property under Section 33 of the 1988 Act (possession on termination of a short assured tenancy).
3. The Applicant's Representative lodged supporting evidence for the application:
  - 3.1. Copy of a short assured tenancy agreement dated 6 July 2011;
  - 3.2. Copy of an AT5 notice dated 1 June 2011;
  - 3.3. Copy Section 33 Notice dated 1 July 2023;
  - 3.4. Copy Notice to Quit dated 10 July 2023 with proof of email service;
  - 3.5. AT6 notice dated 1 June 2011;
  - 3.6. a copy of the Section 11 Notice which was sent to the local authority with proof of posting.
  - 3.7. Rent arrears notices;
  - 3.8. Consent from the joint registered proprietor of the Property to the Application.
4. The tribunal's administration obtained the title sheet to the property which shows that the Applicant is one of the joint registered proprietors of the Property.
5. On 10 April 2024, the Application was accepted for determination and a Case Management Discussion ("CMD") was fixed by teleconference on 14 August 2024 at 1000h.
6. On 8 July 2024, parties were notified by letter of the date, time and place of the CMD and told that they were required to attend. Parties were also advised in the same letter that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the Application, which may involve making or refusing an eviction order. If parties do not attend the CMD 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. The

Respondent was given the opportunity to return written representations to the tribunal's offices by 29 July 2024.

7. The Application paperwork and notification of the date, time and place of the CMD was personally served on the Respondent by Sheriff Officers.
8. Prior to the CMD, the Applicant's representative submitted an updated rental statement and an impact statement from the Applicant.

**Case Management Discussion ("CMD"): 14 August 2024 at 1000 by teleconference**

9. Mrs Myra Blaik, from the Applicant's Representative attended on behalf of the Applicant.
10. The Respondent attended the CMD. The Respondent indicated to the Clerk that English was not his first language.

**Respondent's submissions**

11. Mr Kashaf, the Respondent said that his first language is Urdu but that he understands English. I confirmed with him that he was able to understand English to be able to participate in the proceedings. I told him to let the tribunal know if he had any difficulty in understanding and he said that he would.
12. Mr Kashaf said that he opposes the eviction. He understands that the landlord wants to sell the Property and he wants to buy it. He said that he has lived in the Property since 2007. He was living on his own until last week when his wife joined him on 3 August. He said that he is working in his own business which is a shop. He said that he wants to buy the Property. He said that he is going to organise the funds for a property. He asked his relatives. He said that he owns another property in Glasgow which he wants to sell to buy this Property. He said that this Property is more convenient to his business. The property in Glasgow is an empty property. It is a two bed roomed ground floor property. He has not put it on the market for sale. He intends to instruct an estate agent now that his wife is able to help him in the business. He said that until his wife arrived he has been working by himself and that he has not had enough time and everything is closed after he finishes work. He needs to get paperwork done. He plans to speak to an estate agent about selling the property in Glasgow later today. He said that if the eviction was delayed for some weeks that would help him to sell the Glasgow property and buy the Property in Kirkcaldy.

13. He accepted that he had paid some rent late but said that he sometimes he pays up front. He said that the rent has gone up from £485 to £750 this month to cover the landlord's cost. There has not been a rent increase since 2011. He said that the rent is paid up to date.

### **Applicant's Representative's submissions**

14. Ms Blaik said that the Applicant landlord would like the eviction order to be made today because of the background and the landlord's circumstances.

15. Ms Blaik said that Mr Kashaf has always been a very pleasant tenant to deal with. She said that when his first wife was with him they did not have a problem at all. After the breakdown of his first marriage they constantly sent out rent reminders. She said that he does pay the rent but that he constantly has arrears. She said that he came into the office on Monday with £1135 which put the account £265 in credit.

16. Ms Blaik referred to the landlord's impact statement, which she said is heartbreaking for him. He and his wife lost savings and investments in a fraud. The landlord is 71. He relies on the income from the Property to meet the outgoings. The rent is lower than the outgoings. The landlord cannot go on with irregular payments. He still has a mortgage on this property which runs for two years and he needs to know the money is coming in. He wants to sell the Property and walk away.

17. Ms Blaik said that Mr Kashaf has repeatedly offered to buy over the last two years. She asked Mr Kashaf to present a solicitor's offer and he has not done that. They have had a Home Report done. It was going to be sold to Mr Kashaf. It had been done on that basis and the offer was not forthcoming. They are still open to Mr Kashaf's offer but they need a solicitor's letter.

18. They need to resolve this. Ideally, they would like Mr Kashaf to buy the Property. He has been in that property since 2007. However, they are asking the tribunal to consider making the order today. However, even with the order made they would still be prepared to consider a serious offer to buy. Ms Blaik said that an additional month would give Mr Kashaf a fair chance of getting everything in order.

19. The tribunal adjourned to discuss the case, taking into account both parties' written and oral submissions.

### **20. The tribunal makes the following findings-in-fact:**

20.1. The Applicant is the joint registered proprietor of the Property.

- 20.2. The Applicant has let the Property to the Respondent and has made the application with the consent of the joint registered proprietor.
- 20.3. There was a short assured tenancy between the parties for the initial period from 1 June 2011 to 1 December 2011.
- 20.4. Thereafter the tenancy continued by tacit relocation on a monthly basis and relocated until 1 October 2023.
- 20.5. The short assured tenancy reached its end on 1 October 2023, by service on behalf of the Applicant on the Respondent of a Notice to Quit dated 10 July 2023, notifying the Respondent that the tenancy would reach its termination date as at 1 October 2023.
- 20.6. Tacit relocation is no longer operating.
- 20.7. No further contractual tenancy is for the time being in existence.
- 20.8. A Section 33 notice was served on behalf of the Applicant on the Respondent on 19 July 2023, notifying the Respondent that the Applicant required vacant possession as at 1 October 2023.
- 20.9. The Applicant has given to the Respondent at least two months' notice stating that he requires possession of the Property.
- 20.10. The Application to the tribunal was made on 15 February 2024.
- 20.11. The Respondent has lived in the Property since 2007.
- 20.12. The Respondent has lived on his own for some years since his first marriage breakdown. His second wife moved into the Property with him on or about 3 August 2024.
- 20.13. It is a two bedroomed property.
- 20.14. The Respondent currently has no rent arrears as at 14 August 2024.
- 20.15. The Respondent has been in continual rent arrears and made irregular payments of rent over the period from 2022 to August 2024.
- 20.16. There has been no rent increase between 2011 and 2024. In August 2024 the rent increased to £750 per month.

- 20.17. The Applicant wishes to sell the Property for financial reasons as he can no longer afford to let it.
- 20.18. There is a mortgage on the Property.
- 20.19. There is a shortfall in meeting the Applicant's Property costs each month even when rent is paid on time by the Respondent.
- 20.20. The Applicant is 71.
- 20.21. The Applicant and his wife were the victims of fraud and lost savings and investments.
- 20.22. The Respondent has stated an intention to buy the Property but has not made a formal offer to do so.
- 20.23. The Respondent owns another property in Glasgow which is empty.
- 20.24. The Respondent intends to sell his Glasgow property to release capital to make an offer to buy the Property.
- 20.25. The Respondent's Glasgow property has not yet been marketed for sale.
- 20.26. The Applicant intends to market the property for sale if the tribunal makes an order for possession and is willing to consider a formal offer from the Respondent.

## **21. Findings in Fact and Law**

- 21.1. The tribunal is satisfied that the requirements of Section 33 of the 1988 Act are met.
- 21.2. The tribunal is satisfied that in all the circumstances and on the basis of the findings of fact, it is reasonable to make an order for possession of the Property but to defer the enforcement date of the order to 11 October 2024.

## **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. L. M. Tanner

**14 August 2024**

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**Ms .Susanne L M Tanner K.C.  
Legal Member/Chair**