

**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/24/1058**

**Re: 19 Boroughdales, Dunbar, EH42 1DF ("the Property")**

**Parties:**

**Gary Fairbairn, CGG Properties ('the Applicant')**

**Cruz Property Management Limited ('the Applicant's Representative')**

**Chris Kearsley residing at 19 Boroughdales, Dunbar, EH42 1DF ('the Respondent')**

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

**Tribunal Member: Jacqui Taylor (Legal Member) Gerard Darroch (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 dated 4<sup>th</sup> March 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:

*'Rule 66: Section 33 of the Housing (Scotland) Act 1988. Landlord wishes to sell.'*

2. Documents lodged with the Tribunal were:-

2.1 The Short Assured Tenancy Agreement between the parties. The period of the tenancy was from 31<sup>st</sup> May 2013 to 1<sup>st</sup> December 2013 and month to month thereafter.

2.2 AT 5 dated 31<sup>st</sup> May 2013.

2.3 Section 33 Notice dated 1<sup>st</sup> December 2023 giving notice to the Tenant to vacate the Property on or before 1<sup>st</sup> March 2024.

- 2.4 A copy of the Notice to Quit dated 1<sup>st</sup> December 2023 giving the Tenant formal notice to quit the Property by 1<sup>st</sup> March 2024.
- 2.5 Track and Trace receipt signed by the Respondent on 2<sup>nd</sup> December 2023.
- 2.6 A copy of the Section 11 Notice addressed to East Lothian Council.
- 2.7 An email dated 1<sup>st</sup> February 2024 sending the section 11 notice to East Lothian Council.
- 2.8 A desktop valuation of the subjects by Garden Stirling and Burnet dated 1<sup>st</sup> December 2023.
- 2.9 Email from Gary Fairbairn to the Tribunal dated 27<sup>th</sup> March 2024 advising that he is the registered landlord of the Property. The partnership of CGG Properties (of which he is a partner) manages properties which he and his business partners own and rent and he is happy that CGG Properties act as the sole landlord of the Property.
3. By Notice of Acceptance by Helen Forbes, Convener of the Tribunal, dated 23<sup>rd</sup> April 2024, she intimated that she had decided to refer the application (which application paperwork comprises documents received between 4<sup>th</sup> March 2024 and 28<sup>th</sup> March 2024) to a Tribunal.

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

4.1 This case called for a Case Management Discussion (CMD) Conference call at 10.00 on 28<sup>th</sup> August 2024.

The Applicant was represented by Mrs Margaret Thom of Cruz Property Management Ltd. The Respondent attended.

4.2 No written responses had been received from the Respondent.

4.3 Mrs Thom made the following oral representations to the Tribunal:

4.3.1 Notice to Quit and the section 33 notice have been served on Mr Kearsley and there is no further contractual tenancy in place.

4.3.2 The Landlords want to sell the Property. The Property is one of four in a block and the other three properties are owned by the Local Authority. The Landlords tried to obtain the consent of the Local Authority to having roof repairs carried out to the Property but the Local Authority did not agree. The Property is not in a good state of repair and the Landlords cannot afford to carry out the repairs required. The Landlords own two properties. The other property they own is in a good state of repair. Mrs Thom has been in touch with the Local Authority regarding the proposed eviction. If the eviction order is granted the Local Authority will assist in arranging rehousing for the Respondent.

4.3.3 Mr Kearsley made the following oral representations to the Tribunal:

He has resided in the Property for 10 to 11 years. He has made a housing application to the Local Authority. They will not help him arrange alternative housing until the eviction is granted. He is a single parent and resides in the Property with his 15 year old son who suffers from severe ADHD. There has been no money spent on the Property over the last ten years. The property needs a new roof, new bathroom and new kitchen. There are rent arrears of £2425 but he has entered into a payment plan. Some of the rent arrears relate to a period when there was no hot water in the Property. He has not made a repairing standard application to the Tribunal. He wants to move

on with his life and start the process of being rehoused by the Local Authority. He is happy if the eviction date is four weeks time.

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

- 5.1 Gary Fairbairn is owner of the Property in terms of Land Certificate title number ELN5795.
- 5.2 The Landlord named on the lease is CGG Properties.
- 5.3 CGG Properties act on behalf of Gary Fairbairn and are the defacto landlords.
- 5.4 The Tenant named on the short assured tenancy agreement is Chris Kearskey.
- 5.5 The original term of the Tenancy was from 31<sup>st</sup> May 2013 to 1<sup>st</sup> December 2013 and month to month thereafter.
- 5.6 The ish date of the tenancy is 1<sup>st</sup> March 2024.
- 5.7 The rent due in terms of the lease was £525 per calendar month.
- 5.8 The Notice to Quit and Section 33 Notice were served on the Respondent on 2<sup>nd</sup> December 2023.
- 5.9 Following service of the Notice to Quit the contracted tenancy ended.
- 5.10 There is no ongoing contractual tenancy in place.
- 5.11 The Property is in need of repair.
- 5.12 The Landlords intend to sell the Property.

## **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 East Lothian 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 (1<sup>st</sup> March 2024).

**(c)** The Tribunal confirmed that the application form had been electronically signed and dated by the Landlords' 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 Landlords need to sell the Property and the fact that the Respondent does not object to the application.

**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

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28<sup>th</sup> August 2024

