



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 Housing (Scotland) Act 1988 (“the 1988 Act”)**

**Chamber Ref: FTS/HPC/EV/24/2013**

**Re: Property at 4b Queen Street, Inverurie, AB51 4TP (“the Property”)**

**Parties:**

**Mr Charles Miller, Mrs Laura Miller, 6 Riverside Place, Inverurie, AB51 3TA (“the Applicants”)**

**Mr Lukasz Trendal, 4b Queen Street, Inverurie, AB51 4TP (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondent in favour of the Applicants.**

**Background**

1. The Applicants seek an order for possession in terms of Section 33 of the 1988 Act. A tenancy agreement, AT5 Notice, Notice to Quit, Section 33 Notice, evidence of posting and a Section 11 Notice were lodged with the application.
2. A copy of the application was served on the Respondent by Sheriff Officer. Both parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 7 October 2024 at 10am and that they were required to participate.
3. The CMD took place on 7 October 2024. Mr Miller participated and was represented by Mrs Elder. The Respondent participated. The CMD started late as a result of technical problems with the conference call.

**The Case Management Discussion**

4. Mr Trendal told the Tribunal that he had no issues to raise in relation to the application paperwork. He said that he accepts that he has failed to meet his

obligations in relation to the rent. This is because he has been ill with depression and anxiety. He has applied to the Housing Department of the Local Authority who have indicated that he will not be re-housed until an eviction order is granted. He is unable to meet his rent charge because he has been off work due to ill health. He is only in receipt of universal credit, including the housing costs element. However, as he has other debts, there are sums being taken from his bank account by other creditors which leaves him with insufficient money to pay his rent, even at the reduced rate. He requires a smaller, more affordable property. He previously had someone else living with him to help with the rent but currently lives there alone. In response to a question from the Tribunal, Mr Trendal said that he was not seeking a delay in enforcement of the eviction order.

5. Mrs Elder and Mr Miller told the Tribunal that the reason for seeking possession of the property is the increasing rent arrears. These now stand at £4180. The Respondent is making some payments, but these do not cover the rent charge or even the reduced rent charge which the Applicant agreed to put in place due to the Respondent's health issues. There is no mortgage over the property, but the Applicants rely on the rental income. It is their only rental property. If the property is recovered, they may re-let it or sell it, depending on the circumstances. Mrs Elder also advised the Tribunal that the Applicants have been very patient. Although the arrears started in February 2023, they did not start the proceedings until 2024 to give the Respondent time to sort things out.

### **Findings in Fact**

6. The Applicants are the owners and landlords of the property.
7. The Respondent is the tenant of the property in terms of a short assured tenancy agreement.
8. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondents on 2 February 2024.
9. The Respondent resides at the property alone. He is off work due to ill health and in receipt of universal credit.
10. The Applicant wishes to recover possession of the property because the Respondent has incurred substantial rent arrears.
11. The Respondent does not oppose the application and wants to obtain alternative accommodation in the social rented sector.

### **Reasons for Decision**

12. The application was submitted with a short assured tenancy agreement and AT5 Notice. The initial term of the tenancy was 28 August 2010 to 27 August

2011 with a provision that it would continue on a month to month basis after the initial term.

13. Section 32 of the 1988 Act states “(1) A short assured tenancy is an assured tenancy - (a) which is for a term of not less than 6 months; and (b) in respect of which a notice is served as mentioned in subsection (2) below. (2) The notice referred to in subsection (1)(b) above is on which – (a) is in such form as may be prescribed; (b) is served before the creation of the short assured tenancy; (c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under the tenancy; and (d) states that the assured tenancy to which it relates is to be a short assured tenancy.”
14. The Tribunal is satisfied that the tenancy agreement between the parties was for an initial term of 12 months and therefore meets the requirements of Section 32(1) of the 1988 Act. The Tribunal is also satisfied that an AT5 Notice was given to the Respondent prior to the creation of the tenancy. In the circumstances, the Tribunal determines that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act.
15. From the documents submitted with the application, and information provided at the CMD, the Tribunal is satisfied that the Applicant served a Notice to Quit and Section 33 Notice on the Respondent on 2 February 2024. The Notice to Quit called upon the Respondent to vacate the property on 27 April 2024, an ish date. The Notice contains the information prescribed by the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and complies with the terms of Section 112 of the Rent (Scotland) Act 1984. The Tribunal is satisfied that the Notice to Quit is valid and that the tenancy contract has been terminated. The Section 33 Notice was also served on 2 February 2024 and gave the Respondent more than 2 months’ notice that the Landlord wished to recover possession of the property. A Section 11 Notice was submitted with the application, with evidence that it was sent to the Local Authority. The Applicant has therefore complied with Section 19A of the 1988 Act.
16. Section 33 of the 1988 Act, (as amended by the Coronavirus (Recovery and Reform) (Scotland) Act 2022) states “(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied – (a) that the short assured tenancy has reached its finish; (b) that tacit relocation is not operating; (d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and (e ) that it is reasonable to make an order for possession” Subsection 2 states “The period of notice to be given under subsection (1)(d) above shall be – (1) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period; (ii) in any other case, two months”. The Tribunal is satisfied that the tenancy has reached its finish and, as the Applicant has served a valid Notice to Quit, that

tacit relocation is not operating. A valid notice in terms of section 33(d) has also been served on the Respondent, giving at least two months' notice that the Applicant required possession of the property.

17. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession, in terms of Section 33(e) of the 1988 Act.

18. The Tribunal had regard to the following: -

(a) The Respondent does not oppose the application and wants to move to a property provided by the Local Authority. He requires a smaller, more affordable property because of financial difficulties caused by his inability to work due to ill health.

(b) The Respondent has been in rent arrears for 20 months. This is having an adverse impact on the Applicants who rely on the rental income. They have made efforts to assist the Respondent, including accepting a reduced rent. However, they require to sell or re-let the property.

19. For the reasons specified, the Tribunal is satisfied that it would be reasonable to grant the application.

20. The Tribunal is satisfied that the Applicant has complied with the provisions of the 1988 Act and that it would be reasonable to grant the order.

## **Decision**

21. The Tribunal determines that an order for possession of the property should be granted against the Respondent.

## **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. Bonnar** Legal Member

**Date: 7 October 2024**

