



**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/24/0625

Re: Property at 5 The Clash, Dykehead, DD8 4LQ (“the Property”)

Parties:

**Mr David Lill, Mrs Christine (Penny) Lill, 30 Crawwood, Tweedbank, Galashiels,
TD1 3SU (“the Applicants”)**

Ms Morag McKay, 5 The Clash, Dykehead, DD8 4LQ (“the Respondent”)

Tribunal Members:

**Martin McAllister (Legal Member) and Elizabeth Dickson (Ordinary Member)
 (“the tribunal”)**

Decision (in absence of the Respondent)

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

Background

- 1. This is an application under Section 33 of the Housing (Scotland) Act 1988
 (“the 1988 Act”) for recovery of possession of the Property. It is dated 6
February 2024.**
- 2. The application was accepted for determination on 23 May 2024.**

Case Management Discussion

- 3. A case management discussion was held by teleconference on 2 October
2024.**
- 4. Neither party was present and the Applicants were represented by Mr Neil
Dymock.**

Preliminary Matters

- 5. It was noted that the neither the Respondent or a representative for her was present. The details of the case management discussion had been served on her by sheriff officers on 27 August 2024. The tribunal decided to proceed in her absence.**
- 6. The legal member explained the purpose of a case management discussion.**
- 7. Mr Dymock said that the application had been necessary because the Respondent had not removed herself from the Property by 1 February 2024 and was still residing in it.**
- 8. Mr Dymock submitted that the tribunal had sufficient information to determine the application and that there was no other evidence which he could bring before a Hearing.**

9. Findings in Fact

- 9.1 The Applicants and the Respondent are parties to a short assured tenancy agreement in respect of the Property dated 1 June 2009.**
- 9.2 The term of the tenancy was 1 June 2009 to 1 June 2010 (both dates inclusive).**
- 9.3 The tenancy agreement provided for the tenancy to continue on a month to month basis if it was not brought to an end on 1 June 2010.**
- 9.4 The Applicants served a Section 33 Notice and a notice to quit on the Respondent on 7 November 2023 requiring vacation of the Property by 1 February 2024.**
- 9.5 The Respondent remains in occupation of the Property.**
- 9.6 The required notice in terms of the Homelessness etc. (Scotland) Act 2003 has been given to the local authority.**

10. Findings in Fact and Law

- 10.1 The tenancy continued by tacit relocation from 1 June 2010 until it was brought to an end on 1 February 2024 by service of the Notice to Quit.**
- 10.2 The tenancy ended on 1 February 2024.**
- 10.3 The Applicants are entitled to recover the Property because the**

tenancy has been brought to an end.

10.4 It is reasonable for the order of eviction to be granted.

Documents

11. The tribunal considered the documents which had been lodged with the application:

- 11.1 Copy of the short assured tenancy agreement dated 1 June 2009
- 11.2 AT5 Form relating to the short assured tenancy.
- 11.3 Notice to Quit served on 7 November 2023 requiring the Respondent to leave the Property by 1 February 2024.
- 11.4 Section 33 Notice served on 7 November 2023.
- 11.5 Sheriff Officer's certificate of citation in respect of service of the Notice to Quit and Section 33 Notice.
- 11.6 Copy of Notice to local authority under Section 11 of the Homelessness etc (Scotland) Act 2003.
- 11.7 Copy rent statements.

Applicant's Position

12. Mr Dymock said that the Applicants were seeking recovery of the Property in terms of Section 33 of the Housing (Scotland) Act 1988. He said that the lease had continued on a month to month basis from 1 June 2010 and that the Applicants had sought to regain possession of the Property as at 1 February 2024 by serving a notice to quit on 7 November 2023. He said that 1 February 2024 was an ish date and that the tenancy finished on that date.

13. Mr Dymock referred us to the terms of the short assured tenancy agreement which set out the relevant dates of commencement of the tenancy and the provisions which allowed the tenancy to continue on a month to month basis.

14. Mr Dymock said that Mr and Mrs Lill are retired and want to recover the Property so that they can market it for sale. He said that there are

substantial rent arrears and that it is no longer viable for them to continue ownership. He referred the tribunal to rent statements which show that, at 7 November 2023, the rent arrears were £3050. He said that he took over management of the Property on 1 August 2023 when there had been historic rent arrears of £1690 which represented about five months' rent. He said that no rent had been paid since then, despite promises of the Respondent, and that the current level of rent arrears is £6450.

15. Mr Dymock said that the level of rent arrears was so significant that it was reasonable for the Applicant to recover the Property.

Respondent's Position

16. Mr Dymock did not have much information on the Respondent. He said that she is an agricultural worker and that she has income. He said that, as far as he is aware, the Respondent has one son who is aged around fifteen or sixteen who attends the local school. He said that he has no knowledge of any health or other vulnerabilities in connection with the Respondent and her son.

The Law

Recovery of possession on termination of a short assured tenancy.

(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;

(c)

(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.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) 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.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.

Discussion and Determination

17. The tribunal determined that the Applicant had properly served the notice to quit, that the Respondent had been given the appropriate period of notice and that the appropriate notice had been given to the local authority in terms of the Homelessness etc (Scotland) Act 2003.

18. The tribunal determined that the tenancy had been brought to an end at the ish date by service of the notice to quit.

19. The tribunal noted that, prior to the amendments to the 1988 Act, it would have had no discretion and would have been required to grant the order of eviction. The tribunal does now have discretion and requires to consider reasonableness.

20. The tribunal did not consider that either party had additional evidence to put before it and that there was therefore no reason to arrange for an evidential Hearing to be arranged.

21. The tribunal accepted that there are significant rent arrears and that the Applicants want to sell the Property.

22. The tribunal noted that the Applicants want to recover possession of the Property. They are driven to do so because of the rent arrears, even though they are relying on the provisions of Section 33 of the Act.

23. On balance, the tribunal determined that it was reasonable to grant the application and to make the order. In coming to its determination, the tribunal noted what knowledge it had of the Respondent. Details of the case management discussion had been notified to the Respondent who had chosen not to engage with the Tribunal process.

24. The tribunal considered that the level of arrears are so significant that it was reasonable for the Applicants to recover the Property and determined to grant the order of eviction.

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.

M McAllister

2 October 2024

Legal Member/Chair

Date