

**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/24/0334**

**Re: Property at 53D Sandeman Street, Dundee, DD3 7LD (“the Property”)**

**Parties:**

**CERBS Properties Ltd, 59 Mains Loan, Dundee, DD4 7DD (“the Applicant”)**

**Ms Karen Downton, Mr Barry Wilson, 53D Sandeman Street, Dundee, DD3 7LD  
 (“the Respondent”)**

**Tribunal Members:**

**Mary-Claire Kelly (Legal Member) and Angus Lamont (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined to grant an order for eviction.**

**Background**

1. By application dated 18 January 2024 the applicant seeks an order for eviction seeking to rely on section 33 of the Housing ( Scotland) Act 1988.
2. The applicant lodged the following documents with the application:
  - Copy tenancy agreement
  - Copy form AT5
  - Copy Notice to quit
  - Copy section 33 notice
  - Proof of service of notice to quit and section 33 notices

- Section 11 notice
  - Disposition
  - Copy correspondence from the applicant to the respondent
  - Rent statement
3. The application was conjoined with application reference number FTS/HPC/CV/24/0335 in terms of which the applicant sought an order for payment in respect of outstanding rent arrears.
  4. On 23 May 2024 the respondent's solicitor lodged written defences to both applications.
  5. A case management discussion ("cmd") took place on 3 June 2024 in respect of both applications.
  6. At the cmd the applicant was represented by Ms Cilmi Eldho, Director of Cerbs Properties Ltd. The respondent Karen Downton was represented by Ms McLanders, solicitor from Dundee Law Centre. Barry Wilson the second respondent was not present or represented. The Tribunal was satisfied that Mr Wilson had been properly notified of the cmd and proceeded in his absence.
  7. At the cmd Ms Eldho stated that the amount of rent arrears outstanding had increased to £9080.20 and sought an order for eviction under section 33.
  8. Ms McLanders opposed an order for eviction being granted on the grounds of reasonableness. It was accepted in the written note of defence that the respondents had signed a tenancy agreement on 16 January 2017. It was accepted that the lease agreement was a short assured tenancy. It was also accepted that a valid notice to quit and section 33 notice and form AT6 had been served. Ms McLanders explained that the respondents were eligible to receive payment of rent by universal credit housing costs. She stated that an issue appeared to have arisen in relation to the payment of housing costs after the property changed hands when the applicant purchased the property in December 2022. The DWP had requested a letter be signed by the applicant and the respondents confirming the current lease arrangement. Ms McLanders stated that this had been obtained and should resolve the issue regarding payment of universal credit to cover the housing costs. Ms McLanders advised that Ms Downton was now accessing welfare advice from

Action for Children. This would enable her to make an offer to repay the arrears once it was clear what the current liability for rent would be. Ms McLanders also advised that an application for Discretionary Housing Payment would be submitted to Dundee City Council seeking a payment towards the outstanding arrears once universal credit was in payment.

9. Following the cmd a hearing was fixed for both applications. The Tribunal issued a note requesting that the respondents lodge:

- *Written confirmation of the status of the application for Universal Credit Housing Costs application and the application for Discretionary Housing Payment detailing any payments being made.*
- *A schedule of the household income and expenditure*
- *Written confirmation setting out the period when payment of Universal Credit Housing Payment was made direct to the respondents following the change in ownership of the property*

10. Parties were also requested to lodge updated written representations and any further documents they sought to rely on in advance of a hearing on the question of reasonableness.

### **Hearing – 29 October 2024 - teleconference**

11. Ms Eldho, Director of Cerbs Properties Ltd attended for the applicant. The other Director of the company, Eldho Matthew, Ms Eldho's partner was also in attendance. The respondent Ms Downton was represented by Mr Marshall, solicitor from Dundee Law Centre. Barry Wilson the second respondent was not present. Mr Marshall explained that the respondents were in a relationship and that Mr Wilson would not be attending the hearing. The Tribunal was satisfied that Mr Wilson had been properly notified of the hearing and proceeded in his absence.

12. It was not disputed that the respondents' entered into a Short Assured Tenancy agreement with a commencement date of 16 January 2017. It was not disputed that the applicant assumed the position of landlord when they purchased the property on 2 December 2022. It was also not disputed that proper notices had been served as required in terms of section 33. Accordingly the purpose of the hearing was to consider whether it was

reasonable to grant an order. The Tribunal heard evidence from Ms Downton and Ms Eldho. Both parties were given the opportunity to ask questions of each witness. A summary of Ms Downton and Ms Eldho's evidence is set out below. For the avoidance of doubt this is not a verbatim record of the evidence heard.

### 13. Summary of Ms Downton's evidence

Ms Downton confirmed that she had resided in the house since 2017. She resides with her partner Barry Wilson and her two children aged 17 and 9. Ms Downton stated that she works part time as a cleaner and has a monthly income from employment of approximately £448. In addition she receives universal credit to top up her income. Ms Downton stated that Mr Wilson is not currently in employment however her daughter had recently begun work as a cleaner and was also earning approximately £448 per month. Ms Downton stated that her 9 year old attends the local school where he is well settled. Her 17 year old daughter has had some long standing health issues related to her bowel but was able to work. Ms Downton confirmed that there had been no issues with rent arrears with the previous landlord. She stated that she had not been given notice that the property would be sold and only became aware that the property had been sold when Ms Eldho and Mr Matthew had turned up at their door unannounced. She stated that she had been aware that the property may be going to be put up for sale but had no idea that it had in fact been sold. Ms Downton stated that she was not prepared to pay rent to a stranger and told Ms Eldho that a lease would need to be provided before rent was paid to her. Ms Downton stated that Ms Eldo's partner, Mr Matthew came to the door in June or July 2023 with a fresh lease agreement. She stated that the new agreement specified an increased rent of £650 and also stated that no pets would be allowed in the tenancy. Ms Downton stated that she was not prepared to agree to a lease on those terms and the lease was not signed.

Ms Downton confirmed that from February 2023 to February 2024 the universal credit housing payment was paid directly to her. It had previously been paid to the previous landlord. She confirmed that the money that should have been paid towards the rent had been spent by her on other items. She stated that from February 2024 no housing costs had been paid. She had advised the DWP that there was a new landlord and been requested to

provide evidence of that. She stated that with help from Dundee Law Centre a letter signed by the applicant confirming the lease and rent had been submitted to the DWP however no housing costs had as yet been paid. Ms Dowton advised that she accepted liability for the rent arrears and offered to repay the outstanding amount at the rate of £100 per month. She stated that she did not wish to stay in the property and had been actively looking for alternative accommodation. She stated that there had been issues with the upstairs neighbours with whom her husband had a disagreement with. This had led to the respondents making a complaint to Dundee City Council regarding the behaviour of their upstairs neighbours.

Ms Dowton stated that she had not had any success finding alternative private sector accommodation. She stated that she had made an application to the council for local authority accommodation. She had been advised that once an eviction order had been granted she would be given additional points towards her housing application. She stated that she was aware that she may be provided with temporary accommodation by the local authority and stated that she wished to avoid a physical eviction if possible.

14. Summary of Ms Eldo's evidence. Ms Eldo stated that she felt the landlord tenant relationship had broken down. Ms Eldho stated that the company had purchased the property on 2 December 2022. The property was purchased as an investment and she had been aware that there were sitting tenants. The monthly rent due under the pre-existing tenancy agreement was £600. Ms Eldho advised that after purchasing the property she had written to the respondents on 29 December 2022. A copy of the letter had been submitted with proof of delivery. The letter had advised the respondents that rent should now be paid to the applicant and provided bank details. A copy of the disposition showing that the property had been sold was provided to the respondents with the letter. The letter also advised that the landlord's would like to inspect the property on 8 January 2023. Ms Eldho subsequently visited the property on 8 January 2023. She stated that the respondents stated that they did not believe that the landlord had changed and advised that as they had no lease with the applicant they would not pay rent to the applicant. Ms Eldho advised that prior to buying the property she was not aware that the respondents were in receipt of universal credit to cover the cost of the rent

charge. Ms Eldho stated that in the interests of resolving the rent issue a fresh tenancy agreement had been prepared. Mr Matthew, Ms Eldho's partner had attended the property on or around April 2023 to ask the respondents to sign the new agreement. The respondents had refused to sign the agreement. Ms Eldho stated that a copy of the agreement had not been retained and she was unable to confirm if an increased rent had been proposed. Ms Eldho stated that the respondents had been rude to her and closed the door in her face when she tried to speak to them about the tenancy.

15. Ms Eldho advised that no rent had been received from the respondent since the property was purchased in December 2022. The only rent that had been paid had been transferred from the previous landlord when he received a direct payment from universal credit in December 2022 and January 2023. Ms Eldho advised that rent arrears currently amounted to £11480.20. Ms Eldho stated that she had signed a document to submit to universal credit confirming the existence of the tenancy. She stated she had provided anything that was requested in order to allow the benefits issue to be resolved however there had been no progress in that regard.
16. Ms Eldho stated that the large amount of arrears had an impact on her family. She stated that there was an outstanding mortgage over the property of approximately £75000. She stated that there were also maintenance costs and landlord registration fees for the property which were not being covered by rent payments. She confirmed that applicant had a total of 8 other rental properties also with outstanding mortgages. In order to ensure no future issue with renewing mortgages Ms Eldho stated that she had taken out a personal loan to pay the mortgage to avoid mortgage arrears accruing. She stated that she was not currently working but was actively seeking employment. She stated that Mr Matthew currently worked as a taxi driver. Ms Eldho stated that if the property is recovered the applicant's intention is to re-let the property if possible. Ms Eldho stated that in addition to the issue with the rent arrears there had been issues with the respondents' antisocial behaviour at the property. In particular she stated that there had been complaints regarding arguments within the property which disturbed the neighbours. She stated that the police had been called to the property due to antisocial behaviour.

17. Both parties were given the opportunity to make closing submissions. Ms Eldho stated that the relationship between the landlord and tenant had completely broken down. She restated that she sought an order for eviction.
18. Mr Marshall stated that the main issue with the tenancy was the rent arrears. He stated that Ms Dowton accepted that the rent arrears which related to the year between February 2022 and February 2023 when she had kept the housing payment would have to be repaid. She had offered to make payments of £100 per month towards the arrears. He stated that there was a likelihood that housing costs would be paid once the universal credit issues had been resolved and that an application for backdated housing costs would result in a payment for the period from February 2023 when the housing costs payment had been stopped. Mr Marshall stated that the best prospect of the rent arrears being repaid was if the tenants continued to occupy the property. He submitted that it was not reasonable in the circumstances to grant an order for eviction. Mr Marshall proposed that the Tribunal may wish to adjourn the hearing to a later day to see whether progress could be made on the universal credit housing costs and backdate application however, he was unsure on what procedural basis such an adjournment could be made.

### **Findings in fact and law**

19. The respondents entered into a short assured tenancy agreement with a commencement date of 16 January 2017.
20. Monthly rent in terms of the short assured tenancy agreement is £600.
21. The applicant purchased the property from the previous owner on 2 December 2022.
22. The applicant became landlord at the date they took ownership of the property.
23. The applicant wrote the respondents on 29 December 2022 advising them of the change of ownership and providing a copy of the Disposition relating to the sale of the property.
24. The respondents were advised in the letter dated 29 December 2022 that they should commence payments of rent to the applicant.
25. The respondents received universal credit housing costs which covered the cost of the rent prior to 2 December 2022.

26. Prior to the sale of the property housing costs were paid directly to the landlord.
27. Ms Eldho, Director of Cerbis Properties Ltd visited the property on or around 8 January 2023 to confirm the change of ownership. Mr Downton stated that she would not pay rent to the respondent until a new lease was provided.
28. On or around April 2024 the applicant provided a new lease to the respondents. The respondents refused to sign the lease.
29. The respondents received universal credit housing costs payment of £600 per month directly to them from February 2023 to February 2024.
30. The respondents kept the universal credit housing costs payments of £600 per month from February 2022 to February 2024 without paying rent.
31. The applicant has not received any payment of rent since February 2022.
32. Rent arrears at the date of the hearing are £11,480.20.
33. A notice in terms of section 33 of the Housing (Scotland) Act 1988, a notice to quit and form AT6 were served on the respondents by Sheriff Officers on 27 October 2023.
34. The notice to quit and section 33 fulfilled the requirements of section 33.
35. The respondents have made an application for universal credit housing costs however the application has not been processed.
36. The respondents reside in the property with their 2 children aged 17 and 9.
37. Ms Downton is employed part time as a cleaner.
38. The respondents are in receipt of universal credit.
39. The respondents' 17 year old daughter is employed part time as a cleaner.
40. The respondents' 17 year old daughter has long standing health issues relating to her bowel, however she is able to work part time at present.
41. The respondents' 9 year old attends a local school where he is well settled.
42. Mr Wilson is not in employment.
43. The respondents are actively seeking alternative accommodation.
44. The respondents have made an application for accommodation with Dundee City Council.
45. Ms Eldho is a Director of Cerbs Property Limited.
46. Mr Matthew, Ms Eldho's partner is the other Director of the company.
47. The property has an outstanding mortgage of approximately £75,000.
48. The property was bought as a rental investment property.



49. The company has a number of other buy to let properties with outstanding mortgages.
50. Ms Eldho has taken out a personal loan to avoid mortgage arrears accruing due to unpaid rent in the property.
51. Ms Eldho resides with her 3 young children. She is currently seeking employment.
52. Mr Matthew is employed as a taxi driver.
53. The rent arrears have had a negative impact on Ms Eldho and Mr Matthew's finances.

### **Reasons for the decision**

54. Section 33 of the Housing (Scotland) Act 1988 states:

*33 (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.*

55. In the present application it is not disputed that the applicant has satisfied the requirements of section 33 (a), (b) and (d). The Tribunal is satisfied that a short assured tenancy was created when the respondent's moved into the property. A notice to quit and notice in terms of section 33 were validly served on 27 October 2023. The notice to quit had the effect of preventing tacit

relocation from operating. The section 33 notice provided the tenant with notice that the landlord requires possession of the house.

56. The Tribunal proceeded to make a determination of whether it was reasonable to grant an order for eviction. In assessing whether it is reasonable to grant an order all available facts relevant to the decision were considered and weighed in the balance, for and against.
57. The Tribunal took into account the application and the documents lodged on behalf of the applicant and respondents. The Tribunal also took into account the information provided at the cmd and the evidence of Ms Eldho and Ms Downton at the hearing.
58. The Tribunal found that the respondent Ms Downton may genuinely have been surprised to learn that the applicant had taken ownership of the property in December 2022. This may have caused her some consternation however the Tribunal found the respondents' behaviour in relation to payment of rent thereafter to be unreasonable. The Tribunal found Ms Downton's evidence that she did not believe that the applicant had a right to collect rent unconvincing, particularly as she had received evidence in the form of a Disposition and correspondence from the applicant showing the property had been sold. The Tribunal also found the respondents refusal to pay rent for a period of one year from February 2023 unreasonable. During this period they continued to receive housing costs totalling £7200 however this money was kept and spent. The Tribunal did not consider that the explanation given by Ms Downton for nonpayment of rent for this period was credible. The Tribunal considered that it would have been clear to both respondents that the applicant was the landlord. The Tribunal determines that the respondents knew that the rent should be paid to the applicant from January 2023. Their failure to do so without adequate explanation cast a doubt over much of the evidence provided by Ms Downton. The Tribunal noted that Ms Downton had stated that she would pay rent if a new lease was provided however, this was not legally necessary. Ms Downton had stated that when a new lease was produced as requested it proposed new terms and was not signed. No adequate explanation was provided as to why Ms Downton held the view that no rent need be paid to the applicant in the absence of a new lease.

59. The Tribunal took into account that the respondents had been eligible for housing costs payments to cover the rent prior to the change of ownership. The Tribunal also gave weight to the fact that there was a live universal credit housing costs application. The Tribunal noted that Mr Marshall had indicated that there may be scope for a backdate of housing benefit which would impact on the level of arrears. This factor was outweighed by the lack of progress in relation to the universal credit – particularly since the cmd on 3 June 2024 and the failure to produce any evidence that a back date had been applied for, the level that any backdate of evidence might be or evidence relating to discretionary housing payment. The Tribunal issued a note following the cmd requesting documentary evidence in relation to the housing costs application and a discretionary housing payment application. No evidence or documents had been produced and it appeared that no progress had been on the housing costs application in over 4 months since the cmd. The Tribunal considered that the lack of progress or evidence of the outstanding issues and efforts to address them outweighed the fact that housing costs may have been available in the period from February 2024. The lack of progress gave the Tribunal little faith that any further extension would result in a resolution of the issues. The respondents had demonstrated no urgency in their attempts to address the lack of benefits.

60. The Tribunal took into account that Ms Downton had accepted liability for the arrears and was making an offer to repay the arrears at the rate of £100 per month. However, the level of arrears meant that it would take approximately six years to repay the arrears even if a full backdate of benefit to February 2024 was obtained. The offer made was also considered against a period of over 20 months when arrears had been amassing and no payments had been made. The Tribunal gave particular weight to the fact that following the previous cmd no payments had been made towards the rent account.

61. The Tribunal considered that it would give significant weight to the respondents' family circumstances. The Tribunal accepted Ms Downton's evidence in relation to her 2 children. The Tribunal gave particular weight to the presence of the respondents' 9 year old son and the fact that he had been living in the property for most of his life and was well settled at the local

school. Whilst this factor was given weight it was not definitive and in the other circumstances of the case was not sufficient to lead to a determination that it was not reasonable to evict.

62. A connected factor which the Tribunal took into account was both parties' evidence that there had been issues between the respondents and their neighbours. Ms Downton gave evidence that she was not happy in the property. She had been seeking alternative accommodation and indicated that she may receive assistance from the local authority to find alternative accommodation in the event that an order was granted.

63. Against the difficulties an eviction order would cause to the respondents the Tribunal considered the impact that the tenancy had had on the applicant. The Tribunal found Ms Eldho to be straightforward and believable in the evidence that she provided. The Tribunal accepted Ms Eldho's description of the notification provided to the respondents that the property had changed ownership. The Tribunal considered that Ms Eldho had acted in good faith in contacting the respondents who had behaved unreasonably when they found out the property had been transferred in ownership. Ms Eldho's timeline of events was straightforward, believable and supported by copy correspondence and proof of delivery which had been provided showing notification of the change of ownership.

64. The Tribunal was particularly swayed by the length of time that no rent had been paid in the property. The respondents had purchased the property as an investment. The rent arrears which were now in excess of £11480.20 had a direct financial impact on Ms Eldho and Mr Matthew. They had required to take out extra borrowing to cover the mortgage arrears which had arisen.

65. The Tribunal found no fault in the conduct of the applicant who provided documents such as a new lease and a letter confirming the tenancy to try and progress the benefits issue. The Tribunal also accepted Ms Eldho's evidence that she felt the relationship between the parties had broken down.

66. Taking the foregoing factors into account the Tribunal found that on balance it was reasonable to grant an order for eviction. Whilst the Tribunal had sympathy with the respondents' family circumstances and the impact eviction

may have the extended period over which rent had not been paid and the impact that had on the applicant was a decisive factor.

### **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.**

# Mary-Claire Kelly

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Legal Member/Chair

29 October 2024\_\_\_\_\_  
Date