



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 18 and 33 of the Housing (Scotland) Act 1988**

**Chamber Ref: FTS/HPC/EV/24/2444 & FTS/HPC/EV/24/2445**

**Re: Property at 4 Cloverfoot Cottages, The Wisp, Edinburgh, EH16 4SH (“the Property”)**

**Parties:**

**Mr Niel Jorgensen, 132 St Stephen Street, Edinburgh, EH3 5AA (“the Applicant”)**

**Mr Peter Taylor, 4 Cloverfoot Cottages, The Wisp, Edinburgh, EH16 4SH (“the Respondent”)**

**Tribunal Members:**

**Mary-Claire Kelly (Legal Member) and Mary Lyden (Ordinary Member)**

**Decision (in absence of the Respondent)**

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

**Background**

1. The applicant submitted 2 applications dated 29 May 2024 seeking orders for eviction. Application reference FTS/HPC/EV/24/2444 proceeds under rule 65 and seeks an order for eviction relying on grounds 11 and 12 (rent arrears) in schedule 5 of the Housing (Scotland) Act 1988. Application reference FTS/HPC/EV/24/2445 proceeds under rule 66 and seeks an order for eviction relying on section 33 – recovery of possession on termination of a short assured tenancy - also of the 1988 Act. The submission and documents lodged in support of both applications are largely identical. Both applications are determined together. A separate application under reference

FTS/HPC/CV/24/2446 seeking an order for payment of outstanding rent arrears was also conjoined with the 2 applications.

2. The applicant lodged the following documents with the applications:
  - Short assured tenancy agreement
  - Form AT5
  - Pre action letter to the respondent with proof of delivery
  - Form AT6
  - Rent increase noticed dated 5 September 2022
  - Notice under section 11 of the Homelessness Etc. (Scotland) Act 2003.
3. A case management discussion (“cmd”) was assigned for 1 November 2024

### **Case management discussion – 1 November 2024- teleconference**

4. The applicant was represented by Mr Gardiner, solicitor, from Lindsays. The respondent was not in attendance. The respondent had been served with papers by Sheriff Officers by letterbox delivery on 30 September 2024. The Tribunal was satisfied that that he had been properly notified of the cmd and proceeded in his absence in terms of rule 29.
5. Mr Gardiner sought an order for eviction in respect of both applications. In respect of the section 33 application he stated that the applicant is the owner of the property. The tenancy agreement which had been produced showed the applicant had entered into a short assured tenancy agreement with the respondent and Wendy Keenagh with a commencement date of 17 May 2013. Mr Gardiner stated that Ms Keenagh had passed away on or around October 2019 making the respondent the sole tenant.
6. Mr Gardiner stated that on 6 July 2023 a notice to quit and section 33 notice were served on the applicant. The section 33 notice specified the 16 September 2023 as the date the respondent would require to leave the property. Mr Gardiner submitted that the notices were valid and had been properly served in compliance with the requirements of section 33.
7. In relation to the application proceeding on grounds 11 and 12 Mr Gardiner stated that arrears had been building up for some time. He referred to the rent account which had been lodged which showed arrears as at the date of lodging of the application in the sum of £5024.80. In response to questions from the

Tribunal, Mr Gardiner stated that rent received was paid by universal credit housing costs. Whilst payments were ongoing they consistently fell short of the rent due and accordingly arrears continued to rise. The Tribunal noted that much of the outstanding arrears related to the period since the most recent rent increase which took effect in November 2022. That notice had increased the rent from £835 to £1095. Mr Gardiner pointed to clause 7 in the tenancy agreement which stated:

*“The Landlord may propose to increase the rent after the end date specified at Clause 4 above. Under such circumstances the Tenant will be given a minimum of 1 months’ notice in writing of any proposed change before the beginning of the rental period when the change is to start”.*

8. Mr Gardiner stated that the notice complied with clause 7 of the lease. He also submitted that the notice which was dated 5 September 2022 had been delivered to the respondent before 6 September 2022 which was when the rent cap provisions in Cost of Living (Tenant Protection) (Scotland) Act 2022 came into force. No proof of service of the notice was provided.
9. Mr Gardiner stated that following the most recent increase of rent notice, the letting agent had attempted to contact the applicant to assist with applying for an increase in universal credit housing costs to cover the increase however the respondent had failed to engage with them.
10. Mr Gardiner stated that the respondent continued to fail to engage with the letting agents to address the rising arrears. He stated that the property is a 3 bedroom house. He stated the respondent lived alone. He did not have the respondent’s age however he was aware that the respondent had 3 adult daughters. Mr Gardiner stated that the letting agent had tried to engage with the respondent’s daughters to resolve the issue. Mr Gardiner highlighted that a pre-action letter had been issued in compliance with the pre action protocol which the respondent had failed to respond to.

## **Findings in fact and law**

11. The parties entered into a short assured tenancy agreement with a commencement date of 17 May 2013.
12. The initial duration of the tenancy agreement was until 15 May 2014. Thereafter the tenancy agreement continued on a month to month basis.
13. Monthly rent in terms of the short assured tenancy agreement at the date of commencement was £795.
14. Clause 7 of the tenancy agreement permits the applicant to increase the rent after the initial duration period by giving one month's written notice.
15. The joint tenant Wendy Keenagh passed away on or around October 2019, thereafter the respondent became the sole tenant.
16. A valid notice to quit and section 33 notice were served on the respondent on 6 July 2023.
17. The rent was increased periodically during the tenancy.
18. A rent increase notice dated 5 September 2022 increased the rent from £835 to £1095.
19. The notice was delivered to the respondent prior to 6 September 2022 when the rent cap in the Cost of Living (Tenant Protection)(Scotland) Act 2022 came into force.
20. Arrears as at the date of the cmd amounted to £7950.05.
21. The respondent receives universal credit housing costs of £835 per month. Periodic payments of £36.87 are also made towards rent.
22. The majority of the rent arrears post date the rent increase dated 5 September 2022.
23. The applicant complied with the pre-action protocol as required in terms of section 18 (4A) of the Housing (Scotland) Act 1988 in respect of grounds 11 and 12.
24. The respondent resides alone in the property.

### **Reasons for the decision**

25. The Tribunal took into account the application and the documents lodged on behalf of the applicant. The Tribunal also took into account the information provided at the cmd by Mr Gardiner.

### **Establishment of the grounds**

26. 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.*

27. The Tribunal is satisfied that a short assured tenancy was created. A valid notice to quit and notice in terms of section 33 were served on the respondent on 6 July 2023. The notice to quit had the effect of preventing tacit relocation from operating. The section 33 notice provided the respondent with notice that the landlord requires possession of the house.

28. Ground 11 in schedule 5 of the Housing (Scotland) Act 1988 states that it is a ground for recovery of possession:

*whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.*

29. Ground 12 in schedule 5 of the Housing (Scotland) Act 1988 states that it is a ground for recovery of possession if:

*Some rent lawfully due from the tenant—*

*(a) is unpaid on the date on which the proceedings for possession are begun; and*

*(b) except where subsection (1)(b) of section 19 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.*

30. Section 18 of the 1988 Act further specifies:

*(4) If the First-tier Tribunal is satisfied that any of the grounds in Part I or II of Schedule 5 to this Act is established, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.*

*(4A) In considering for the purposes of subsection (4) above whether it is reasonable to make an order for possession on Ground 11 or 12 in Part II of Schedule 5 to this Act, the First-tier Tribunal shall have regard, in particular, to]—*

*(a) ]the extent to which any delay or failure to pay rent taken into account by the Tribunal in determining that the Ground is established is or was a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit, and*

*(b) the extent to which the landlord has complied with the pre-action protocol specified by the Scottish Ministers in regulations.*

31. The Tribunal determined that grounds 11 and 12 were established in respect of the level and duration of rent arrears.

### **Consideration of reasonableness**

32. 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. The Tribunal also took into account the specific factors set out in section 18(4A) which were relevant to grounds 11 and 12.

33. The Tribunal was satisfied that the arrears at the property amounted to £7950.05 as at the date of the cmd. The respondent had not lodged any information which sought to demonstrate that the arrears were in any part due to issues with benefits. The Tribunal took into account that the respondent may have been eligible for housing costs to cover the full rent charge had he applied for same however no evidence that there was a delay or failure on the part of the Department of Work and Pensions in paying benefit had been lodged by

the respondent. The Tribunal took into account Mr Gardiner's submissions that assistance with benefits had been offered at the time of the most recent rent increase but had not been taken up by the respondent.

34. The Tribunal was satisfied that correspondence sent to the respondent dated 10 April 2024 contained the necessary information to comply with the pre-action protocol in respect of rent arrears grounds.
35. The Tribunal took into account the high level of arrears, which continued to rise and that no contact or payment had been made by the respondent since the application had been lodged.
36. The Tribunal gave particular weight to the fact that the respondent had not taken any steps to oppose the application or submit a defence.
37. The Tribunal took into account that the rent arrears largely post-dated the most recent rent increase however in the absence of a challenge to the validity of the increase the Tribunal was satisfied on the basis of the documents submitted that the increase had been lawfully implemented and in particular the Tribunal had no reason to disbelieve the submission made on behalf of the applicant that the rent increase dated 5 September 2022 was delivered before 6 December 2022 when the increase would not have been competent due to the Cost of Living (Tenant Protection) (Scotland) Act 2022.
38. The Tribunal took into account the information provided in relation to the respondent's personal circumstances. The Tribunal noted that the respondent resided alone in the 3 bedroom property. He had resided there for 11 years since 2013 initially with Wendy Keenagh who had since passed away. The Tribunal took into account that the respondent had 3 adult children. The Tribunal gave weight to the fact the respondent may become homeless in the event an order was granted.
39. The Tribunal found the absence of any opposition to the applications by the respondent to be a factor of particular weight and determined that it was reasonable to grant an order on grounds 11, 12 and section 33 of the 1988 Act in the foregoing circumstances.

## **Decision**

**The Tribunal determined to grant an order for 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 C Kelly**

**1/11/24**

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**Legal Member/Chair**

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**Date**