



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014.**

**Chamber Ref: FTS/HPC/EV/24/2198**

**Re: Property at 55 Carlibar Road, Barrhead, G78 1AE (“the Property”)**

**Parties:**

**Mr Paul Manson, 18 Stansfield Court, Frankston, South Victoria, 3199, Australia (“the Applicant”)**

**Miss Michelle McGhee, 55 Carlibar Road, Barrhead, G78 1AE (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Elizabeth Williams (Ordinary Member)**

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

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 55 Carlibar Road, Barrhead, G78 1AE under Section 33 of the Housing (Scotland) Act 1988 be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

**Background**

1. This is an action for recovery of possession of the Property raised in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
2. The application was accompanied by a copy of a tenancy agreement dated 7 October 2011 between the Applicant and the Respondent, an AT5 dated 7 October 2011, a Notice to Quit and Section 33 Notice dated 23

January 2024, a Sheriff Officer's Execution of Service dated 25 January 2024, a rent statement, a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 to East Ayrshire Council dated 14 May 2024 and an acknowledgement from East Ayrshire Council dated 14 May 2024.

3. On 17 June 2024, the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 1 October 2024, the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 8 November 2024. The Respondent required to lodge written submissions by 22 October 2024. This paperwork was served on the Respondent by Stuart Sinclair, Sheriff Officer, Glasgow on 2 October 2024 and the Execution of Service was received by the Tribunal administration.
5. The Respondent did not lodge any written representations by 22 October 2024.
6. On 18 October 2024 the Applicant's letting agent Mr Nixon sent an up to date rent statement showing arrears of £10,984.33. A copy of this was sent to the Respondent on 23 October 2024.

### **Case Management Discussion**

7. The Tribunal proceeded with the CMD on 8 November 2024 by way of teleconference. The Applicant was represented by Mr Nixon from Rite Home letting agents. There was no appearance by or on behalf of the Respondent despite the teleconference starting 5 minutes late. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in her absence. The case was heard with an application for recovery of rent arrears under reference FTS/HPC/CV/24/2199.
8. The Tribunal had before it the tenancy agreement and AT5 dated 7 October 2011 between the Applicant and the Respondent, the Notice to Quit and Section 33 Notice dated 23 January 2024 with Sheriff Officer's Execution of Service dated 25 January 2024, the rent statement showing arrears of £10,984.33, the Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 to East Ayrshire Council dated 14 May 2024 and an acknowledgement from East Ayrshire Council dated 14 May 2024. The Tribunal considered the terms of these documents.

9. The Tribunal explained it had had an opportunity of considering the Application and was satisfied that the necessary legal requirements had been met, but that Tribunal had to be satisfied it was reasonable to evict.
10. Mr Nixon confirmed he was seeking an order for eviction. The arrears were £10 984.33. With reference to the rent statement he explained that from November 2023 when rent stopped getting paid they had written numerous emails and letters to the Respondent requesting she contact them regarding the arrears. She never did. He understood the Respondent lived in the Property with three children aged about 6-13. The last time they had been in the Property was on 4 August 2022 and since then they had tried to gain access to the Property, but this had been refused or cancelled. They had accordingly also raised an action for access with the Tribunal. He understood the Respondent worked part time. He advised he had contacted the Respondent's mother who is a local councillor in about April to see whether she could help, but that he had had a frosty reception from her.
11. On being questioned by the Tribunal, Mr Nixon advised his client lived in Australia and had a mortgage there. He could not afford to live with the level of arrears accrued by the Respondent. The Applicant wanted to get the Property back to sell.

### **Findings in Fact**

12. The Applicant and the Respondent entered into a Short Assured Tenancy Agreement on 7 October 2011 commencing on 7 October 2011 and ending on 7 April 2012. In terms of Clause 3.1 of the tenancy agreement the tenancy continued thereafter on a monthly basis.
13. In terms of Clause 3.1 the Respondent agreed to pay a monthly rent to the Applicant. The current rent is £820 per month. The Respondent has fallen into rent arrears. The current arrears are £10 984.33.
14. The Applicant's agent served a Notice to Quit and Notice in terms of Section 33 of the Housing (Scotland) Act 1988 both dated 23 January 2024. These were served on the Respondent by Sheriff Officers on 25 January 2024. The Notice to Quit and the Section 33 Notice expired on 7 April 2024.
15. The Short Assured Tenancy reached its end as at 7 April 2024.
16. *Tacit relocation* is not operating. The contractual Short Assured Tenancy had been brought to an end by the Notice to Quit on 7 April 2024.
17. The Applicant wishes to sell the Property.
18. The Respondent lives in the Property with three children.

19. The Applicant's agent served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on East Ayrshire Council. The Council acknowledged receipt of the Section 11 Notice on 14 May 2024

### **Reasons for Decision**

20. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the oral submissions made by Mr Nixon at the CMD. The Tribunal concluded that the Applicant was entitled to seek repossession of the Property under Section 33 of the Housing (Scotland) Act 1988. There was a properly constituted Short Assured Tenancy with the Respondent. The Tribunal was satisfied that the statutory provisions of Section 33 of the Housing (Scotland) Act 1988 had been met namely that the Short Assured Tenancy had reached its term (termination date); the Notice to Quit brought the contractual Short Assured Tenancy to an end, and that the Applicant had given the Respondent notice in terms of Section 33(1)(d) of the Housing (Scotland) Act 1988 stating that possession of the property was required by 7 April 2024.

21. The terms of Section 33 of the Housing (Scotland) Act 1988 would normally entitle the Applicant to a right of mandatory repossession of the Property. In terms of Schedule 1, paragraph 3 (4) of the Coronavirus (Scotland) Act 2020 the Applicant also has to satisfy the Tribunal that it is reasonable to evict. In determining whether it is reasonable to grant the order the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal gave weight to the Respondent being in substantial arrears and that she had not been in contact with the Applicant's agent to make any arrangement to clear these. The Tribunal also considered the issues that the Applicant had had in gaining access to the Property but gave little weight to these. Although the Tribunal gave some weight to the fact the Respondent had three children living with her, that did not outweigh the fact she had incurred substantial arrears which she appeared to have no intention of paying and for which she alone was responsible for. Further the Tribunal gave weight to the Applicant's wish to sell the Property. The Tribunal considered that the Respondent had not opposed the application. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.

22. In the circumstances the Tribunal considered that in terms of Section 33 of the Housing (Scotland) Act 1988 as amended it was reasonable to grant an eviction order.

### **Decision**

23. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

## 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.

# S Evans

10 November 2024

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Legal Member

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Date