



**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/24/2836

**Re: Property at 36 Cauldhame Rigg, Stewarton, Kilmarnock, KA3 5QJ (“the
Property”)**

Parties:

**Kirsten Toft, 4 Paxford House Square, Ottery St Mary, Devon, EX11 1BX (“the
Applicant”)**

**Robert Williamson, Jacquelyn Williamson, 36 Cauldhame Rigg, Stewarton,
Kilmarnock, KA3 5QJ (“the Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondents)

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

Background

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the property. In support of the application the Applicant provided the following documentation:-
 - (i) Short Assured Tenancy Agreement dated 17 April 2017 together with Form AT5;
 - (ii) Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988 dated 1 February 2024 together with proof of service by recorded delivery mail;
 - (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to East Ayrshire Council together with proof of service by email;

- (iv) Rent statement;
 - (v) Copy letters from the Applicant's letting agent to the Respondents dated 22 February 2024, 4 March 2024 and 15 March 2024; and
 - (vi) Rent increase notices dated 30 January 2022 and 3 April 2023.
- 2 By Notice of Acceptance of Application dated 17 July 2024 a Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. The application was therefore referred to a Case Management Discussion ("CMD") on 25 November 2024 to take place by teleconference. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondents by Sheriff Officers in accordance with Rule 17(2) of the Rules of Procedure. Both parties were invited to make written representations in advance of the Case Management Discussion.
 - 3 Prior to the CMD the Applicant's representative emailed an updated rent statement to the Tribunal, which was copied to the Respondents.

Case Management Discussion

- 4 The CMD took place on 25 November 2024 by teleconference. The Applicant was in attendance and represented by Ms Alexandra Wooley of Bannatyne Kirkwood France and Co. The Respondents were not present. The Tribunal noted that they had been given notification of the CMD under Rule 17(2) of the rules and therefore determined to proceed in their absence.
- 5 The Tribunal explained the purpose of the Case Management Discussion and the legal test and asked for the submissions from Ms Wooley. For the avoidance of doubt the following is a summary of the submissions made and does not constitute a verbatim account of the discussion, only those matters relevant to the Tribunal's determination of the application.
- 6 Ms Wooley confirmed that the short assured tenancy between the parties had commenced in April 2017. A notice to quit and notice under section 33 of the 1988 Act had been sent to the Respondents on 1 February 2024, terminating the tenancy as at 18 April 2024. The Applicant was seeking repossession as the Respondents were in rent arrears, which currently stood at £2136. Ms Wooley pointed out that the account had been in arrears for almost a year. They had fluctuated but had never been cleared by the Respondents. Ms Wooley submitted it would be reasonable for an eviction order to be granted. The arrears were significant. The Applicant had a mortgage over the property and the arrears had impacted her ability to pay the mortgage. Ms Wooley explained that the Applicant lived in rental accommodation and was having to pay both the mortgage costs and her rent. Ms Wooley advised that the local authority

would have an obligation to provide the Respondents with emergency accommodation were an eviction order to be granted.

- 7 Ms Wooley explained that the Respondents had contacted the Applicant's letting agent at the beginning of this month. They indicated that they were looking for accommodation and planned to vacate the property by 30th November 2024. There had been no further updates from the Respondents regarding their plans. It was regrettable that they had not attended the CMD.
- 8 In response to questions from the Tribunal Ms Wooley advised that this was the only rental property owned by the Applicant. She understood that the Respondents resided with an adult child and were both in employment. They had not disclosed any health conditions and were not believed to be in receipt of benefits.
- 9 The Tribunal adjourned the CMD to deliberate, at which point parties left the call, before resuming the CMD and confirming its decision.

Relevant Legislation

- 10 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Housing (Scotland) Act 1988:-

“32 Short assured tenancies.

(1)A short assured tenancy is an assured tenancy—

(a)which is for a term of not less than six 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 one which—

(a)is in such form as may be prescribed;

(b)is served before the creation of the 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 that tenancy; and

(d)states that the assured tenancy to which it relates is to be a short assured tenancy.

(3)Subject to subsection (4) below, if, at the finish of a short assured tenancy—

(a)it continues by tacit relocation;

(b).

the continued tenancy... shall be a short assured tenancy, whether or not it fulfils the conditions in paragraphs (a) and (b) of subsection (1) above.

(4) Subsection (3) above does not apply if, before the beginning of the continuation of the tenancy the landlord or, where there are joint landlords, any of them serves written notice in such form as may be prescribed on the tenant that the continued tenancy is not to be a short assured tenancy.

(5) Section 25 above shall apply in relation to a short assured tenancy as if in subsection (1) of that section the reference to an assured tenancy were a reference to a short assured tenancy.

33 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 ish;

b) that tacit relocation is not operating; and

(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 six months, that period;

(ii) in any other case, six 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.”

Findings in Fact and Law

- 11 The Applicant entered into a Short Assured Tenancy Agreement with the Respondents dated 17 April 2017, the term of which was 17 April 2017 to 17 October 2017 and monthly thereafter. The Respondents were both provided with a Form AT5 prior to the creation of the tenancy.
- 12 The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 13 On 1 February 2024 the Applicant delivered to the Respondents a Notice under section 33 of the Housing (Scotland) Act, stating that the Applicant required the property back by 18 April 2024, and a Notice to Quit which sought to terminate the tenancy as at that date. The Notice to Quit was in the prescribed form. The Notices were served by recorded delivery mail.
- 14 The Respondents are in rent arrears. As at the date of the CMD the arrears outstanding are £2136.
- 15 The Respondents have been in arrears for approximately one year.
- 16 The Respondents reside in the property with an adult child. The Respondents are both in employment. The Respondents have no known health conditions and are not receiving benefits.
- 17 The rent arrears have impacted the Applicant's financial situation. The Applicant has a mortgage over the property. The arrears have caused the Applicant difficulties in making the mortgage payments.
- 18 The Applicant lives in rented accommodation.
- 19 The Respondents have advised the Applicant's letting agent that they plan to move out of the property by 30 November 2024.

Reasons for Decision

- 20 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved. The Respondents had not attended the CMD, nor made written representations. They had not sought to challenge the information provided by the Applicant.
- 21 The Tribunal was satisfied based on the application paperwork and the submissions from Ms Wooley that the tenancy in place between the parties was a short assured tenancy. The Tribunal was also satisfied that the Respondents

had been served with a Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988, terminating the tenancy as at the ish date of 18 April 2024. The issue for the Tribunal to determine therefore was whether it was reasonable in all the circumstances of this case to grant an eviction order.

- 22 The Tribunal noted that the Respondents were in rent arrears amounting to £2136 as at the date of the CMD. The rent account produced by the Applicant showed a history of sporadic payments. This would understandably have caused the Applicant significant stress, particularly as she had the financial burden of the mortgage payments for the property in addition to her own rent.
- 23 The Tribunal also took into account the fact that the Respondents were both in employment and resided with an adult child. They had indicated that they were in fact making plans to vacate the property. They had not disclosed any health conditions that would place them at risk in the event of an eviction order being granted, and the Tribunal accepted Ms Wooley's submissions that the local authority would have an obligation to provide them with accommodation were that to occur.
- 24 Accordingly, having taking those factors relevant to the assessment of reasonableness into account the Tribunal concluded that the balance weighed in favour of making an eviction order and the provisions of section 33 of the 1988 Act had been met.
- 25 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.

Ruth O'Hare

27 November 2024

Legal Member/Chair

Date

