



**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/24/3067

**Re: Property at Silverknowes, Woodhead, Fyvie, Aberdeenshire, AB53 8LY (“the
Property”)**

Parties:

Ms Louise Stratton, 18 Edgehill Road, Aberdeen, AB15 5JH (“the Applicant”)

**Mr William Florence, Silverknowes, Woodhead, Fyvie, Aberdeenshire, AB53
8LY (“the Respondent”)**

Tribunal Members:

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

Decision (in absence of the Respondent)

**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 under Rule 66 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 and section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). In support of the application the Applicant provided the following documentation:-
 - (i) Short Assured Tenancy Agreement between the parties together with Form AT5;
 - (ii) Notice to quit to the Respondent dated 17 April 2024;
 - (iii) Notice under section 33(1)(d) of the 1988 Act to the Respondent dated 17 April 2024;

- (iv) Certificate of service of the notice to quit and notice under section 33(1)(d) of the 1988 Act upon the Respondent by Sheriff Officers on 22 April 2024; and
 - (v) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Aberdeenshire Council together with proof of sending by email.
- 2 By Notice of Acceptance of Application a Legal Member of the Tribunal 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 17 December 2024, to take place by teleconference. Notification was sent to the parties in accordance with Rule 17(2) of the Rules of Procedure.
 - 3 Said notification together with a copy of the application paperwork was served upon the Respondent by Sheriff Officers on 12 November 2024.
 - 4 Both parties were invited to make written representations in advance of the CMD. No written representations were received.

Case Management Discussion

- 5 The CMD took place on 17 December 2024 by teleconference. Mr Aaron Doran of Raeburn Christie Clark and Wallace Solicitors represented the Applicant. The Respondent was not in attendance. The Tribunal noted that he had been given notification of the CMD in accordance with Rule 17(2) of the Rules and therefore determined to proceed in his absence.
- 6 The Tribunal ask Mr Doran for his submissions on the application. For the avoidance of doubt the following is a summary of the submissions made and does not constitute a verbatim account of the discussion.
- 7 Mr Doran advised that the application related to a short assured tenancy which had commenced on 28 February 2006. A notice to quit and a notice under section 33(1)(d) of the 1988 Act had been served upon the Respondent by Sheriff Officers, terminating the tenancy as at 27 June 2024. Mr Doran submitted that it would be reasonable for an eviction order to be granted. Whilst there were no rent arrears outstanding in this case, the Respondent had neglected the property both inside and out. Most recently, he had failed to report a significant leak in the kitchen, which resulted in over an inch of water sitting on the kitchen floor for about a month. The Applicant was concerned about the condition of the property and the risk of further damage.
- 8 Mr Doran explained that the Applicant had lost her husband on Christmas day 2020. She was now on her own and could no longer cope as a landlord. It was having a significant impact on her mental health. She had therefore made the decision to sell the property. She had offered to sell to the Respondent but he had indicated that he had no intention of purchasing the property. Mr Doran

confirmed that the Respondent resided in the property alone. He was an independent farmer therefore he had a source of income. The Respondent had refused to engage with the Applicant, and Mr Doran following his instruction in the matter. Mr Doran noted that the Respondent had been ordained to lodge written representations in response to the application but had failed to do so. There was no defence before the Tribunal and no indication that it would be unreasonable for an eviction order to be granted in this case.

- 9 The Tribunal then held a short adjournment of the proceedings to deliberate, at which point Mr Doran 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.”

11 The following provisions of the Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No.3, Amendment, Saving Provision and Revocation) Regulations 2017 are also relevant to this decision:-

6. Savings provision

Despite the amendments made by section 75 and paragraphs 1, 2 and 3 of schedule 5 of the 2016 Act, sections 12, 32 and 33 of the 1988 Act have effect

on and after 1st December 2017 as they had effect immediately before that date but only in relation to—

(a) a short assured tenancy (within the meaning given in section 32(1) of the 1988 Act) which was created before 1st December 2017 and continues in existence on that date;

(b) a new contractual tenancy (within the meaning given in section 32(3)(b) of the 1988 Act) which came into being before 1st December 2017 and continues in existence on that date; and

(c) a new contractual tenancy (within the meaning given in section 32(3)(b) of the 1988 Act) which comes into being on or after 1st December 2017 at the ish of a short assured tenancy which is a short assured tenancy in a case mentioned in paragraph (a) or (b).

Findings in Fact and Law

- 12 The Applicant entered into a tenancy agreement with the Respondent, the term of which was 28 February 2006 to 27 August 2006 and monthly thereafter. The Respondent was provided with a Form AT5 prior to signing the said Tenancy Agreement.
- 13 The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 14 On 22 April 2024 the Applicant delivered to the Respondent a notice under section 33 of the Housing (Scotland) Act, stating that the Applicants required the property back by 27 June 2024, and a notice to quit which sought to terminate the tenancy as at that same date.
- 15 The notice to quit included the prescribed information required under the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988.
- 16 The notices were delivered by Sheriff Officers.
- 17 The notice to quit terminates the tenancy as at 27 June 2024 which is an ish date under the terms of the tenancy agreement.
- 18 The Applicant requires vacant possession of the property in order to sell the property.
- 19 The Applicant lost her husband in December 2020. The Applicant can no longer manage the responsibilities of being a landlord on her own.

- 20 The Applicant has offered to sell the property to the Respondent. The Respondent declined her offer in this regard.
- 21 The Respondent resides in the property alone.
- 22 The Respondent is an independent farmer.
- 23 The Respondent has failed to report repairs timeously to the Applicant. The Respondent has neglected his obligations to maintain the property in a reasonable state of repair.

Reasons for Decision

- 24 The Tribunal was satisfied at the CMD 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 Respondent had been given notification of the CMD. He had been given the opportunity to participate in the CMD and make written representations but had failed to do so. Accordingly, taking into account the overriding objective to avoid delay in Tribunal proceedings insofar as compatible with proper consideration of the issues the Tribunal considered it could proceed to make a decision in his absence, and make relevant findings in fact based on the information provided by the Applicant.
- 25 The Tribunal was satisfied based on the application paperwork that the tenancy between the parties was a short assured tenancy, and that the Respondent had received a notice to quit terminating the tenancy as at the ish of 27 June 2024 and a notice under section 33(1)(d) of the 1988 Act. The issue for the Tribunal to determine therefore was whether it was reasonable in all the circumstances to grant an eviction order, which required the Tribunal to identify those factors relevant to the question of reasonableness and determine what weight to apply to them.
- 26 The Tribunal considered the Applicant's circumstances. The Tribunal took into account the fact that she had lost her husband in 2020 and was no longer able to manage the responsibilities of being a landlord on her own. The Tribunal found it credible that she had therefore made the decision to sell the property. These were factors to which the Tribunal gave significant weight.
- 27 The Tribunal also had regard to the Respondent's circumstances. The Tribunal accepted that he had been negligent in his obligations to report repairs timeously to the Applicant based on the submissions made by Mr Doran at the CMD and that he had allowed the condition of the property to deteriorate. The Tribunal also took into account the fact that the Respondent resided alone, therefore there were no dependents who would be at risk of eviction, and that he was employed as an independent farmer with a source of income to obtain alternative accommodation if required. The Tribunal was unable to obtain any further information regarding the Respondent's circumstances given his failure to

participate in the proceedings and was therefore reliant upon the information provided by the Applicant in this regard.

28 Accordingly having weighed up those factors that were relevant to the question of reasonableness, the Tribunal considered that there was nothing to outweigh the making of an eviction order. The Tribunal therefore concluded that the provisions of section 33 of the 1988 Act had been met and it would be reasonable to make an eviction order.

29 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

17 December 2024

Legal Member/Chair

Date