



**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/24/3993

Re: Property at 5 Ruskin Crescent, Methil, Leven, KY8 1DD (“the Property”)

Parties:

**James Clark T/A James Clark Properties, 30 Glenlyon Place, Leven, Fife, KY8
4QY (“the Applicant”)**

**Miss Margaret Chinskie, 5 Ruskin Crescent, Methil, Leven, KY8 1DD (“the
Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member) and David Fotheringham (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the provisions of section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”) have been met. The Tribunal therefore made an eviction order.

Background

- 1 This is an application for an eviction order under Rule 66 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) and section 33 of the 1988 Act.
- 2 The application was referred to a case management discussion (“CMD”) to take place by teleconference on 31 March 2025. The Tribunal gave notice of the CMD to the parties in accordance with Rule 17(2) of the Rules. Sheriff Officers served notice upon the Respondent personally on 18 February 2025.
- 3 The Tribunal invited parties to make written representations in advance of the CMD. No written representations were received.

The CMD

- 4 The CMD took place on 31 March 2025 by teleconference. The Applicant joined the call with his representative, Ms Jackie Craigie. The Respondent did not attend. Ms Craigie advised that she was unaware of the Respondent's position, as there had been no recent contact between the parties. The Tribunal therefore delayed the start time of the CMD before determining to proceed in the Respondent's absence.
- 5 The Tribunal had the following documents before it:-
 - (i) Form E application form dated 26 August 2024;
 - (ii) Title Sheet FFE46514 confirming the Applicant as the registered owner of the property;
 - (iii) Proof of the Applicant's landlord registration in the form of an excerpt from the online landlord register;
 - (iv) Short Assured Tenancy agreement and Form AT5, both dated 23 November 2017;
 - (v) Notice to quit and notice under section 33(1)(d) of the 1988 Act both dated 10 June 2024 together with proof of service on the Respondent by sheriff officers;
 - (vi) Section 11 notice to Fife Council together with proof of delivery by email;
 - (vii) Copy email correspondence between the Applicant and Respondent regarding rent arrears; and
 - (viii) Rent statement.
- 6 The Tribunal explained the purpose of the CMD and asked Ms Craigie for her submissions on the application. For the avoidance of doubt the following is a summary of the key elements of the submissions relevant to the Tribunal's determination of the application and does not constitute a verbatim account of the discussion.
- 7 Ms Craigie advised that the Applicant sought an eviction order. His primary motivation for terminating the tenancy was the outstanding rent arrears. Ms Craigie explained that the Respondent had taken up the tenancy in November 2017. She had initially paid rent for the first few months but had fallen into arrears at the beginning of 2018. Since then there had been sporadic periods of payment, and issues with her benefits. The Respondent was now in receipt of the housing element of universal credit in the sum of £450 per month, which did not meet the monthly rent of £550 per month. Ms Craigie confirmed that the rent had been increased incrementally over the term of the tenancy.
- 8 Ms Craigie explained that she had spoken to the Respondent on numerous occasions and had encouraged her to seek advice. It appeared that the Respondent could no longer afford the rent for the property. The Respondent was reluctant to communicate with the Applicant regarding her arrears, despite his efforts. Ms Craigie advised that she was unaware of any familial support the Respondent may have in the area. The Respondent was unemployed and had alluded to having health issues, but had not provided any specification as to

what these might be. The Respondent did not appear to have any physical disability and the property was not adapted. Ms Craigie advised that the Applicant would likely re-let the property, but had not yet settled upon his intentions in this regard and may consider selling instead.

- 9 The Tribunal adjourned the CMD to deliberate, at which point parties left the call, before resuming the discussion 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 time 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

11 The Applicant is the owner and landlord of the property.

12 The Applicant and Respondent entered into a tenancy agreement in respect of the property dated 23 November 2017.

13 The Applicant gave the Respondent a Form AT5 notice that the tenancy was a short assured tenancy under section 32 of the 1988 Act prior to signing the said tenancy agreement.

- 14 The tenancy between the parties is a short assured tenancy as defined by section 32 of the 1988 Act.
- 15 On 13 June 2024 the Applicant sent the Respondent a notice to quit and a notice under section 33(1)(d) of the 1988 Act. The notices were delivered by sheriff officers.
- 16 The notice to quit terminated the tenancy as at 23 August 2024, which is a valid ish date of the tenancy.
- 17 The Applicant sent a notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Fife Council at the date of raising this application.
- 18 In terms of the said tenancy agreement the Respondent undertook to pay rent at the rate of £476 per month. The Applicant increased the rent incrementally over the term of the tenancy. The current contractual rent is £550 per month.
- 19 The Respondent has persistently failed to make payment of the contractual rent. The Respondent has accrued arrears on the rent account, which amount to £10,497.73 as at the date of this decision.
- 20 The Respondent receives the housing element of universal credit in the sum of £450 per month. The Respondent cannot make up the shortfall between her rent and universal credit. The arrears are continuing to accrue.
- 21 The Applicant has discussed the rent arrears with the Respondent on numerous occasions. The Applicant has directed the Respondent to support agencies and has encouraged her to seek advice.
- 22 The Respondent has indicated to the Applicant that she has health issues but has provided no specification as to what these are. The Respondent has no known physical disability.
- 23 The Respondent resides alone and is unemployed.

Reasons for Decision

- 24 The Tribunal was satisfied it had sufficient information upon which to reach a decision on the application having regard to the application paperwork and the submissions heard at the CMD. In terms of Rule 17(4) and Rule 18(1) of the Rules the Tribunal determined that it could make a decision at the CMD as there were no issues to be resolved that would require a hearing and the Tribunal was satisfied that to make a decision would not be contrary to the interests of the parties. The Respondent had been personally provided with a copy of the application paperwork and had not sought to challenge any of the information therein, nor had she attended the CMD.

- 25 The Tribunal was satisfied that the tenancy between the parties was a short assured tenancy under section 32 of the 1988 Act having considered the tenancy agreement and Form AT5 produced by the Applicant. The Tribunal therefore considered the provisions of section 33 of the 1988 Act, which provide a framework under which a landlord can recover possession of a short assured tenancy.
- 26 The Tribunal accepted that the contractual tenancy had been brought to an end by the service of a notice to quit, and that the Respondent had been given notice in accordance with the provisions of section 33(1)(d) of the 1988 Act. The issue for the Tribunal to determine therefore was whether it was reasonable in the particular circumstances of this case for an eviction order to be granted. This required the Tribunal to identify the relevant factors pertaining to an assessment of reasonableness and determine what weight to give to them.
- 27 The Tribunal took into account the Applicant's reasons for repossessing the property. The Tribunal accepted that the rent arrears were now untenable, being in excess of £10,000. It was clear that the Applicant had given the Respondent numerous opportunities to address the situation, prior to making his application to the Tribunal, and had encouraged her to seek support and advice. The Tribunal also gave significant weight to the Applicant's property rights as the registered owner of the property, which would entitle him to possession, were an assured tenancy not in place.
- 28 The Tribunal also had regard to the Respondents' circumstances. In light of the fact that the Respondent had not participated in the proceedings the Tribunal was limited to the information provided by Ms Craigie at the CMD. The Tribunal noted that the Respondent was unemployed. There was a suggestion that she suffered from ill-health, however she had not provided any evidence of this, nor clarity as to her diagnoses. Accordingly, whilst the Tribunal had some concerns about the general risk of homelessness to the Respondent, the Tribunal gave more weight to the Applicant's reasons for seeking eviction, which were clear and compelling. The Tribunal was also aware that at the very least the Respondent may be entitled to emergency accommodation from the local authority were an eviction order granted.
- 29 Accordingly having considered the above factors as relevant to the issue of reasonableness the Tribunal determined that the balance weighed in favour of granting an eviction order in this case.
- 30 The Tribunal therefore concluded that the provisions of section 33 of the 1988 Act had been met and made an eviction order. 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.

Legal Member: Ruth O'Hare

Date: 31 March 2025

R O'Hare