



**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/24/4726

Re: Property at 12 Church Street, Arbroath, DD11 1JL (“the Property”)

Parties:

Ms Karen Ross, Joiners Cottage, 13a Cowgate, Tayport, DD6 9DT (“the Applicant”)

Mrs Jacqueline Docherty, 12 Church Street, Arbroath, DD11 1JL (“the Respondent”)

Tribunal Members:

Yvonne McKenna (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 that an order for possession upon termination of a short assured tenancy be granted

Background

1. By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under section 33 of the Housing (Scotland) Act 1988. In support of the application the Applicant provided the following documentation:-

- (i) Short Assured Tenancy Agreement between the parties dated 27 May 2016 together with Form AT5 dated 27 May 2016 ;

- (ii) Notice to Quit dated 15 July 2024 together with proof of service by recorded delivery mail with the signature of the Respondent on 16 July 2024;
- (iii) Notice under section 33 of the Housing (Scotland) Act 1988, and Form AT6 dated 15 July 2024 together with proof of service by recorded delivery mail with the signature of the Respondent on 16 July 2024;
- (iv) Notice under section 11 of the Homelessness (Scotland) Act 2003 to the local authority;
- (v) Rent Statement dated 27 September 2024;
- (vi) Various correspondence between the parties, PAT sheet and photographs of damage

2. By Notice of Acceptance of Application dated 9 November 2024, a Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was assigned for the 22 April 2025 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 Respondent by Sheriff Officers, on 25 February 2025.

3. No written representations had been lodged by the Respondent in advance of the Case Management Discussion.

Case Management Discussion

4. The Case Management Discussion ('CMD') took place by teleconference on 22 April 2025 at 10am. The Applicant was present on the line; along with her solicitor representative Mr Myles. The Respondent was not present.

5. The Tribunal explained the purpose of the CMD, and asked Mr Myles to address the Tribunal on the Applicant's position.

6. Mr Myles advised that the Applicant sought an eviction order in terms of section 33 1 (d) of the Housing (Scotland) Act 1988. He submitted that the Short Assured Tenancy commenced on 27 May 2016 and that a Notice to Quit and a Section 33 Notice were served which ended the contractual tenancy. The

lease reached its “ish” on 26 September 2024, and tacit relocation is not ongoing. Given that section 33 is fulfilled he sought eviction.

7. On the issue of reasonableness, he founded on the fact that the Respondent had not engaged in the Tribunal process, and also on the ongoing nature of the arrears of rent. The Respondent remains in three months arrears. Following the issuing of the Notices, the Respondent stopped paying rent, and no payments were made for the 3 months from 27 July 2024. The Applicant was aware that the Respondent was in receipt of benefits, and made an application for the rent to be paid direct to her by the local authority. This has been in place since September 2024. Despite being paid Housing Benefit previously, the Respondent did not make this payment over to the Applicant for 3 months, and has made no effort to clear the arrears since. There is still £1485 of rent arrears due.

8. Furthermore the relationship between the parties has broken down completely. The Respondent is in breach of the tenancy agreement, and is not permitting contractors organised by the Applicant, to enter the Property for inspection and repairs. Mr Myles said that since 2016, contractors have needed to access the Property on 28 occasions, due to damage caused by the Respondent.

9. The Applicant is 61 years of age. She has taken early retirement to look after her partner who is 67 years old. She is in receipt of a works pension, and also a small private pension, and carers allowance. She receives the rental for the Property, from which she is not making any profit. The situation is causing her stress and anxiety. She wishes to sell the Property, and to realise some capital for her retirement. This is the only Property that she owns. She purchased the Property for £70,000. There has been little appreciation since she bought it. She has required to spend money every year for repairs. She is concerned about the deteriorating condition of the Property. The Respondent’s adult daughter has been intimidating towards the Applicant, when she has attended at the Property.

10. The Respondent is in her 50s. All of her rent is being paid by the local authority. The Applicant is unaware of the Respondent having any major health issues. She believes that she may have some mental health issues, but is

unsure. The Respondent resides in the Property together with her adult son, who is 23 years of age, and in employment. The Property provides two bed roomed ground floor accommodation. The Respondent is known to have approached the local authority both in 2020 and in 2024 for rehousing, but will not be prioritised until an order for eviction is made.

11. The Applicant sought to bring the tenancy to an end, and Mr Myles submitted in the circumstances, that it was reasonable to do so.

Findings in Fact

12. The Applicant entered into a Short Assured Tenancy Agreement with the Respondent which commenced on 27 May 2016, for a period until 29 November 2016, and monthly thereafter.

13. The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.

14. On 15 July 2024 the Applicant delivered a Notice under section 33 of the Housing (Scotland) Act stating that the Applicant required the property back by 26 September 2024, and a Notice to Quit to the Respondent 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 and were signed for by the Respondent on 16 July 2024.

15. The Notice to Quit terminates the tenancy as at 26 September 2024 which is a valid ish date.

16. After the Notices were served, the Respondent stopped paying rent.

17. The Respondent has accrued rent arrears in the sum of £1485. The Respondent has been in arrears of rent continually since July 2024.

18. The Respondent lives in the Property together with her adult son who is in employment. She is reliant on Universal Credit.

19. The rent for the Property is now paid in full, direct to the Applicant, by the local authority. This followed an application made by the Applicant to the local authority in September 2024, three months after the rent payments had stopped in July 2024.

20. The Respondent received Housing Benefit over the three month period that rent arrears accrued, made payable directly to her for the full rental amount.

21. The Applicant served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on Angus Council on 10 October 2024.

Reasons for Decision

22. 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 Tribunal did not consider there to be any requirement to fix a hearing on the matter as there were no issues to be resolved.

23. The Tribunal was satisfied that the Respondent had been served with a valid Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988. The issue for the Tribunal to determine therefore was whether it was reasonable in all the circumstances to grant an eviction order.

24. The Tribunal noted that the Applicant had been financially prejudiced due to the fact that the Respondent had been in continual rent arrears for a period of 10 months. The Respondent had received full Housing Benefit to pay her rent between July- September 2024, and had chosen not to do so. The Respondent had not engaged in the Tribunal process. She is in breach of the tenancy agreement. She is refusing the Applicant, and contractors instructed by the Applicant, access to the Property, for inspection and repair. There was no information before the Tribunal to contradict the position put forward by Mr Myles, which the Tribunal found to be straightforward and credible. Therefore having balanced the particular facts and circumstances of this case, the Tribunal concluded that it would be reasonable to make an eviction order.

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.

Yvonne McKenna

22 April 2025

Legal Member/Chair

Date