



**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/21/1151

**Re: Property at 41 Niddrie Marischal Green, Midlothian, Edinburgh, EH16 4EN
("the Property")**

Parties:

**Mr William McAra, Mrs Sheila Fraser, 6 Beveridge Close, Mayfield, Dalkeith,
EH22 5TP ("the Applicant")**

**Miss Staci Kelly, 41 Niddrie Marischal Green, Midlothian, Edinburgh, EH16 4EN
("the Respondent")**

Tribunal Members:

Melanie Barbour (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that it should grant and order for possession of the
Property.**

Background

1. An application was received under rule 66 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ("the 2017 Rules") seeking recovery of possession under a short assured tenancy by the Applicants against the Respondent for the property.
2. The application contained :-

- A copy of the tenancy agreement,
- a copy of the AT5,
- a copy of the Section 33 Notice,
- a copy of the Notice to Quit,
- evidence of service by sheriff officers
- Section 11 Notice with evidence of service
- Rent statement.

3. Today's case management discussion was held by telephone conference call. At the case management discussion, the Applicant's agent, Ms Morrison from T C Young appeared. The Respondent was represented by Ms McLeod from Community Help and Advice Initiative (CHAI).

4. The tribunal also had before it copies of sheriff officers' certificate of service on the respondent for today's hearing.

Case Management Discussion

5. The Applicant's agent advised that she sought an order for repossession in terms of section 33 of the Housing (Scotland) Act 1988.

6. The applicant's agent referred to the papers lodged in support of the application, including the tenancy agreement, AT5, notice to quit, Section 33 notice, section 11 notice and certificates of service.

7. The applicant's agent addressed the tribunal on the reasonableness of granting the order. She advised that the applicant had complied with the terms of section 33 and had served all the appropriate notices on the respondent.

8. The applicant's agent advised that it would be reasonable to grant the order given that the respondent had significant rent arrears which were outstanding. She advised that they had increased since the application was made. She advised that the arrears had arisen since November 2019. The rent was £1175

per month. Housing benefit payments which were received from November 2019 were in the region of £591.91 per month. The respondent was making some additional payments of £30 per week. However, these payment left a short fall, and the arrears were increasing every month. She advised that a discretionary housing benefit payment was supposed to have been applied for the balance of the rent, however the applicant had investigated this and there was no evidence of it being sought. She advised that the applicant had made repeated contact with the respondent regarding repayment of the arrears however they were still outstanding.

9. The respondent's representative advised that she was instructed not to oppose the order for possession of the property. She did not dispute the application, or the reason put forward as to the reasonableness of granting the order.

Findings in Fact

10. The tribunal found the following facts established:-

11. That there was a tenancy agreement between the Applicant and the Respondent in respect of the property.

12. That it had commenced on 4 October 2013 until 9 April 2014. The agreement was for an initial period of 6 months, and it continued on a monthly basis thereafter.

13. The tenancy agreement had been signed by the parties on 2 October 2013.

14. The AT5 Form was in the prescribed format and there was evidence that it had been given to the Respondent prior to the creation of the tenancy agreement.

15. The notice to quit notice contained the prescribed information, was dated 21 October 2020, it sought vacant possession as of 9 May 2021.

16. The section 33 notice contained the prescribed information, was dated 21 October 2020, it sought vacant possession as of 9 May 2021.

17. There appeared to be evidence of service for both notices on the Respondent.

18. A section 11 notice appeared to have been served on the local authority.

19. Rent arrears outstanding were £12,060.03 as of 15 June 2021.

Reasons for Decision

20. Section 33 of the 1988 Act (as amended by the Coronavirus (Scotland) Act 2020) provides that the tribunal may grant an order for possession under a short assured tenancy, where the tenancy has reached its end; tacit relocation is not operating; the landlord has given notice to the tenant that they require possession of the house; and that it is reasonable to do so.

21. The tribunal was satisfied that a short-assured tenancy had been created.

22. We were also satisfied with the terms of the section 33 notice and the notice to quit; and that these notices had been served on the Respondent.

23. Having regard to the issue of whether it was reasonable to make an order for possession, it was not disputed by the respondent that she owed rent arrears of £12,060.03. Further the arrears were continuing to increase. The respondent did not oppose the order for possession being granted. She had sought advice on this matter and was represented by the Community Help and Advice Initiative. Given all of the information before us the tribunal considered that it would be reasonable to grant the order for possession.

24. We were satisfied that the requirements of section 33 had been met and we considered therefore that we should grant an order for eviction under section 33 of the Housing (Scotland) Act 1988.

Decision

25. We grant an order in favour of the Applicant against the Respondent for recovery of possession of the property.

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.

M. B

5 July 2021

Legal Member/Chair

Date