



**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/22/2594**

**Re: Property at 322 Stirling Street, Denny, FK6 6QN (“the Property”)**

**Parties:**

**Mr Mathie Wallace, Mrs Mary Elizabeth Wallace, 5 Fir Road, Doune, FK16 6HU (“the Applicant”)**

**Mr Andrew Bayne, 322 Stirling Street, Denny, FK6 6QN (“the Respondent”)**

**Tribunal Members:**

**Gabrielle Miller (Legal Member) and Frances Wood (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery and possession should be granted in favour of the Applicant**

**Background**

1. This is an application in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The Applicant is seeking an order for recovery of possession in terms of section 33 of the Act.
2. On 20<sup>th</sup> April 2023, all parties were written to with the date for the Case Management Discussion (“CMD”) of 25<sup>th</sup> May 2023 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 11<sup>th</sup> May 2023.
3. On 21<sup>st</sup> April 2023, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by letterbox service. This was evidenced by Certificate of Intimation dated 21<sup>st</sup> April 2023.

## Case Management Discussion

4. The Tribunal held a Case Management Discussion (“CMD”) on 25<sup>th</sup> May 2023 at 2pm by teleconferencing. The Applicants were not present but was represented by Mr John Jarvie, Trainee Solicitor, Bannaytne Kirkwood France & Co. The Respondent was present and represented himself.
5. Mr Jarvie told the Tribunal that the Applicants were still seeking an order for eviction. He said that the Respondent has had sufficient notice as he was served the Notice to Quit and the Section 33 notice on 13<sup>th</sup> January 2022 and it was an expectation that the Respondent would be rehoused by the local authority. The Applicants still intend to sell the Property as they wish to retire and realise their asset. Mr Jarvie said that there were a number of maintenance issues that needed to be addressed in the Property. The Applicants have been unsuccessful in being able to gain entry to the Property to undertake the work. He also noted that the Respondent has made sporadic payments during periods when his employment status has fluctuated. Mr Jarvie said that he believes that the Applicants only own one property for letting purposes which is this one.
6. The Respondent said that he was not in a position to oppose an order being granted. He has spoken to his local council and has been told to contact them again once he has had an order granted against him. He has tried to obtain another private tenancy but has not been able to do so because of the very high cost of renting privately now. He is in full-time work, lives alone, has no dependents and is in reasonable health with no requirement for any specially adapted property. He is concerned as the local authority have told him that he will only be entitled to bed and breakfast accommodation. He is concerned that he will not be able to afford it. He does not think that he is entitled to any benefits. The Tribunal noted that there are many agencies that would help him assess that, should he wish to look into it further. The homeless unit that he is working with may also be able to assist him.
7. The Tribunal was satisfied that there were no issues of reasonableness before them that prevented an order for eviction being granted. The Respondent had been aware that the Applicants wished to sell the Property from January 2022. The application has been caught by the Cost of Living (Tenants Protection)(Scotland) Act 2022 which means that the Respondent will not be able to be removed from the Property until at least 1st October 2023. This is 20 months after the notices were served. The Respondent is not opposing an order being granted. The Respondent is concerned about when he would be rehoused by his local authority, into what type of accommodation he would be rehoused and how much it will cost. The Tribunal did not consider that this was a ground of reasonableness as he was clear that he was to be rehoused by the local authority who provide reasonably cost effective housing.

## Findings in Fact

8. The parties entered into a Short Assured Tenancy on 2<sup>nd</sup> April 2017 for a 12 months period until 2<sup>nd</sup> April 2018. An AT5 was signed by both parties on 2<sup>nd</sup> April 2021. The rent payments of £495 per month are due on the 2<sup>nd</sup> day of each month.
9. A Notice to Quit was served upon the Respondent by recorded delivery. The Notice to Quit was dated 13<sup>th</sup> January 2022 and served by recorded delivery on that date. Vacant possession was required as of 2<sup>nd</sup> August 2022.
10. A section 33 Notice dated 13<sup>th</sup> January 2022 stating that the vacant possession was required as of 2<sup>nd</sup> August 2022 with proof of recorded delivery service dated 13<sup>th</sup> January 2022.
11. The Respondent did not have grounds to oppose an order being granted. His concerns arise about where he will be located when rehoused by the local authority and how much it will cost.
12. There were no issues of reasonableness preventing an order for eviction to be granted.
13. The Housing and Property Chamber received an application dated 20<sup>th</sup> March 2023.

## Reasons for Decision

14. The Tribunal was satisfied that there were no other issues of reasonableness before them and that the notices had been served in an appropriate manner and that a Short Assured Tenancy had been entered into by the parties. Given this the Tribunal was satisfied all appropriate paperwork had been served the Order for repossession was granted.

## Decision

15. The Tribunal granted the Applicants an Order for recovery of possession.

## **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/Chair**

**25<sup>th</sup> May 2023**

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**Date**