



**Amended 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/22/3746**

**Re: Property at 34 Warrenfield Crescent, Kirkwall, Orkney, KW15 1QB (“the Property”)**

**Parties:**

**Mrs Victoria Stanger, Seaview, Tankerness, Orkney, KW17 2QP (“the Applicant”)**

**Mr Alfred Stanger, 34 Warrenfield Crescent, Kirkwall, Orkney, KW15 1QB (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Mr D MacIver (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 should be granted.**

**Background**

1. This is a Rule 66 application received in the period between 11<sup>th</sup> October and 11<sup>th</sup> November 2022. The Applicant is seeking an order for possession of the Property. The Applicant’s representative lodged a copy of the short assured tenancy agreement between the parties that commenced on 8<sup>th</sup> February 2016 until 7<sup>th</sup> February 2017 and monthly thereafter, copy Notice to Quit and section 33 notice dated 5<sup>th</sup> August 2022 with evidence of service, copy section 11 notice with evidence of service, Form AT5 dated 27<sup>th</sup> January 2016, and copy correspondence from the Applicant to the Respondent.
2. The application and notification of a forthcoming Case Management Discussion was served upon the Respondent by Sheriff Officers on 13<sup>th</sup> January 2023.
3. By email dated 15<sup>th</sup> February 2023, the Applicant’s representative lodged an affidavit by the Applicant dated 6<sup>th</sup> February 2023.

4. A Case Management Discussion set down for 24<sup>th</sup> February 2023 was adjourned.
5. By email dated 12<sup>th</sup> May 2023, the Applicant's representative lodged an inventory of productions comprising a rent statement and copy correspondence.
6. By letter dated 21<sup>st</sup> April 2023, parties were notified of a Case Management Discussion to take place on 19<sup>th</sup> May 2023.

### **The Case Management Discussion**

7. A Case Management Discussion took place by telephone conference on 19<sup>th</sup> May 2023. Neither party was in attendance. The Applicant was represented by Mrs Maltman, Solicitor.
8. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 17(2) had been satisfied, and it was appropriate to proceed with the application in the absence of the Respondent.
9. Mrs Maltman confirmed there had been no recent contact or communication between the parties. Mrs Maltman addressed the Tribunal on the issue of the Form AT5 which had been left at the Property for the Respondent prior to the commencement of the tenancy. It had not been signed and returned by the Respondent, but he had signed the tenancy agreement, and clause 19 thereof confirmed his receipt of the Form AT5. The Notice to Quit and section 33 notice had been served upon the Respondent, with receipt confirmed on 6<sup>th</sup> August 2022.
10. Mrs Maltman said the Respondent resides alone in the Property with his dog. He owns a large property and it is believed his father resides there. The Respondent had been in two months' arrears of rent, but he has now paid the arrears in full. The Applicant has concerns about the condition of the Property but has been unable to gain access for inspection purposes.
11. The Applicant intends to sell the Property to consolidate her finances. She has one child and is expecting another. She wishes to reduce her hours at work and selling the Property will assist her in doing so. Mrs Maltman was not aware of whether the Applicant was in financial difficulties at present.
12. Responding to questions from the Tribunal on the circumstances of the Respondent, Mrs Maltman said she was unsure of his age or whether he was in employment. He is a relative of the Applicant's husband. There has been a lack of engagement for some time and the Respondent has ignored correspondence.

13. The Tribunal adjourned to allow Mrs Maltman to contact the Applicant to provide some further information to allow it to properly consider whether it was reasonable to grant the order.
14. On reconvening, Mrs Maltman said it is believed the Respondent is not in employment, having been made redundant four or five years ago. Offers from family of assistance to find further employment had not been taken up. The rent is paid directly by the Respondent, and it is believed he is in receipt of a pension. The Applicant has been told that the Respondent has been in touch with the local authority. A house may be available to him, but the matter is currently on hold until eviction paperwork is available.
15. Mrs Maltman said the Applicant has a large mortgage over the family home and the increase in interest rates has impacted upon the family's ability to pay this. The Applicant also has some loans and credit card debt. She will soon be taking maternity leave. There is now an increased tax burden from renting the Property. The Applicant hopes to pay off her debts and part of her mortgage when she sells the Property. The Applicant cannot reduce her hours at work unless she can reduce her outgoings, which she will be able to do if she sells the Property.

### **Findings in Fact and Law**

16.
  - (i) Parties entered into a short assured tenancy agreement in respect of the Property that commenced on 8<sup>th</sup> February 2016, enduring until 7<sup>th</sup> February 2017 and monthly thereafter.
  - (ii) Notice to Quit and Section 33 Notice were served on the Respondent, requiring the Respondent to quit by 7<sup>th</sup> October 2022.
  - (iii) The short assured tenancy has reached its ish date.
  - (iv) The contractual tenancy terminated on 7<sup>th</sup> October 2022.
  - (v) Tacit relocation is not in operation.
  - (vi) The Applicant has given the Respondent notice that they require possession of the Property.
  - (vii) It is reasonable to grant the order for possession.

### **Reasons for Decision**

17. Section 33 of the Act provides that the Tribunal may make an order for possession if satisfied that the short assured tenancy has reached its finish, tacit relocation is not operating, the landlord has given notice to the tenant that they require possession, and it is reasonable to make the order.

18. The contractual tenancy has been terminated and tacit relocation is not in operation. The Applicant has given the Respondent notice that they require possession of the Property.
19. The Tribunal took into account that the Applicant is in some difficulty in terms of her financial circumstances, with a large mortgage on her family home, and some loans and debt. The size of her family will soon increase, and she requires to reduce her hours at work in order to look after her children. The cost of renting the Property, with an increased tax burden, has added to the Applicant's difficult financial circumstances. Selling the Property will assist in easing her financial burden, reducing her child care costs, and allowing her to reduce her working hours.
20. The Tribunal took into account the limited information in relation to the Respondent's circumstances. He has been a tenant for seven years. He is not currently in rent arrears, but there have been recent arrears, and he is not engaging with the Applicant to discuss tenancy related matters, including entry to assess the condition of the Property. The Tribunal took into account the information provided regarding the Respondent's engagement with the local authority, and the possibility of alternative accommodation being made available, however, it was difficult to give weight to this anecdotal information.
21. In considering whether it was reasonable to grant the eviction order, the Tribunal considered that a *prima facie* case in respect of reasonableness had been made out on behalf of the Applicant, given her financial and family circumstances. The Respondent was not in attendance to put forward any further reasons why it would not be reasonable to grant the order, despite having been notified of the hearing.
22. In all the circumstances, the Tribunal considered it reasonable to grant the order.

## **Decision**

23. An order for possession of the Property is granted under section 33 of the Housing (Scotland) Act 1988. The order is not to be executed prior to 12 noon on 22<sup>nd</sup> June 2023.

## **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.

# H Forbes

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Legal Member/Chair

2<sup>nd</sup> June 2023  
Date