



**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 (Act)**

**Chamber Ref: FTS/HPC/EV/23/0810**

**Re: Property at 13 Morlich Walk, Livingston, EH54 5AU (“the Property”)**

**Parties:**

**Mr Lenny Hughes, 65 Gordon Way, Livingston, West Lothian (“the Applicant”)**

**Mr Jerzy Kisielewicz, 13 Morlich Way, Livingston, EH54 5AU (“the Respondent”)**

**Tribunal Members:**

**Alan Strain (Legal Member) and Elizabeth Williams (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for eviction and recovery of possession be granted.**

**Background**

This is an application under section 33 of the Act and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (**Regulations**) in respect of the termination of a Short-Assured Tenancy (**SAT**).

The Tribunal had regard to the following documents lodged in advance of the CMD:

1. Application dated 14 March 2023;
2. SAT commencing 8 July 2017;
3. AT5
4. Notice to Quit;
5. Section 33 Notice;
6. Certificate of Service of Notices by Sheriff Officers dated 15 December 2022;
7. Section 11 Notice and email serving on local authority dated 9 March 2023;
8. Certificate of Service of CMD Notification by Sheriff Officers dated 15 May 2023.

## **Case Management Discussion (CMD)**

The case called for a CMD by conference call on 15 June 2023. The Applicant participated and represented himself. The Respondent did not participate and was not represented.

The Tribunal delayed the start of the CMD to see if the Respondent would participate but he did not.

The Tribunal were satisfied that the Respondent had received notification of the Case Management Discussion and that the Tribunal could determine the matter if it considered it had sufficient information to do so and the procedure was fair. The notification also advised the Respondent that he should attend and the Tribunal could determine the matter in absence if he did not.

The Tribunal discussed the Parties respective circumstances with the Applicant in so far as he was aware. He informed the Tribunal that the Respondent lived in the Property with his wife and daughter (whom he believed was no older than 10). There were some £4000 of rent arrears due to the Respondent ceasing to pay rent after the notices were served. The Respondent had since then recommenced payment of rent.

In so far as the Applicant's position was concerned he informed the Tribunal that he needed the Property back for financial and personal reasons.

Having heard from the Applicant the Tribunal then considered the eviction application before it.

The Tribunal considered the oral and documentary evidence from the Applicant and in so far as material made the following findings in fact:

1. The Parties let the subjects under an SAT commencing 8 July 2017;
2. An AT5 had been served on the Respondent prior to commencement of the SAT;
3. Notice to Quit and Section 33 Notice had been served on 15 December 2022;
4. Section 11 Notice had been served on the local authority;
5. The SAT had reached its term and had been terminated;
6. Tacit relocation was no longer operating;
7. No further contractual tenancy was in existence;
8. The Applicant had given the Respondent notice that he required possession;
9. The Respondent was in rent arrears of £4,000 as at the date of the CMD;
10. The Applicant required to recover possession of the Property due to financial and personal reasons.

The Tribunal considered all of the evidence and submissions. The Tribunal were aware that it had to be satisfied that it was reasonable in the circumstances to grant the order sought. The Tribunal determined that it would be reasonable to grant the order sought in the circumstances.

The Tribunal granted the application for eviction and recovery of possession.

The Tribunal explained to the Applicant that the **Cost of Living (Tenant Protection)(Scotland) Act 2022** applied and that meant that the Applicant could not take steps to enforce recovery of possession until the expiry of 6 months after the grant of the order or the repeal of the Act (whichever was the sooner).

### **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.**

**Alan Strain**

**15 June 2023**

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**Legal Member/Chair**

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**Date**