



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber)**

**Chamber Ref: FTS/HPC/EV/22/2415**

**Re: Property at 13 Central Avenue, Kinloss, Moray, IV36 3XU (“the Property”)**

**Parties:**

**Squadron Investments Limited (in receivership), 17 High Street, Barry, South Glamorgan, CF62 7EA (“the Applicant”)**

**Mr David Elliot, 13 Central Avenue, Kinloss, Moray, IV36 3XU (“the Respondent”)**

**Tribunal Members:**

**Virgil Crawford (Legal Member) and Eileen Shand (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**BACKGROUND**

1. By lease dated 29 April 2013 the Property was let to the Respondent by the then landlord, Julian Hodge Bank Ltd;
2. Prior to execution of the lease a Notice in terms of s32 of the Housing (Scotland) Act 1988 (“the 1988 Act”) – commonly referred to as a Form AT5 – was served upon and signed by the Respondent. The lease is, therefore, a Short Assured Tenancy in terms of the 1988 Act;
3. After sundry procedure, the Landlord was liquidated and the Applicants were appointed as receivers of the company;
4. The receivers determined that it was necessary to sell the property to ingather funds to satisfy their obligations as receivers and, therefore, instructed Solicitors to seek an order for the eviction of the Respondent from the Property;

5. A Notice to Quit and a Notice in terms of s33 of the 1988 Act were served upon the Respondent;
6. A Notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the Local Authority;
7. After the expiry of the period of notice in the Notice to Quit and the Notice in terms of s33 of the 1988 Act the Applicants presented an Application to the Tribunal seeking an Order for Eviction of the Respondent;

## **THE HEARING/CASE MANAGEMENT DISCUSSION**

8. The Applicant was represented at the Case Management Discussion by Miss Sara Di Carlo, Solicitor, Messrs Harper MacLeod LLP. The Respondent did not participate in the Case Management Discussion. The Tribunal, however, was in receipt of a certificate of intimation by Sheriff Officers confirming that the proceedings had been intimated upon the Respondent. In the circumstances, the Tribunal was satisfied in terms of Rule 24 of The First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the FTT Regs”) that the Respondent had received intimation of the date and time of the Case Management Discussion and considered it was appropriate to proceed with the Case Management Discussion in the absence of the Respondent in accordance with Rule 29 of the FTT Regs;
9. Miss Di Carlo invited the Tribunal to grant an order for eviction of the Respondent from the Property to enable the Property thereafter to be sold by the Applicant. The legal requirements to enable such an order to be granted had been complied with in that a Notice to Quit, a Notice in terms of s33 of the 1988 Act, a Notice in terms of s11 of the Homelessness Etc (Scotland) Act 2003 had all been served and intimated as required;
10. The Tribunal, of course, still required to consider the issue of reasonableness of an order being granted and that notwithstanding the fact the Respondent did not participate in the proceedings. To that end, the Tribunal made various enquiries of Miss Di Carlo in relation to the Respondent; The Tribunal was advised that:-
  - the Solicitors for the Applicant had not had any communication from the Respondent since before they were appointed to act, that being in April 2022.
  - To the best of their knowledge and belief the Respondent was still residing within the property.
  - To the best of their knowledge and belief the Respondent was a single male who resided at the property alone.
  - His age was not known to the Solicitors for the Applicant.
  - It was not known whether he had any disabilities or vulnerabilities.
  - As far as the Applicants are aware, the Property has not been adapted for any reason.

- As far as the Applicants are aware there are no rent arrears.
- As far as the Applicants are aware the Local Authority should have engaged with the Respondent following service of the Notice in terms of s11 of the Homelessness Etc (Scotland) Act 2003. Receipt of that Notice had been acknowledged by the Local Authority.
- The Agents for the Applicant were not aware as to whether any enquiry had been made in relation to the possibility of the property being sold with the Respondent remaining as a sitting tenant.

## **FINDINGS IN FACT**

11. The Tribunal found the following facts to be established:-

- a) By lease dated 29 April 2013 the Property was let to the Respondent by the then landlord, Julian Hodge Bank Ltd;
- b) Prior to execution of the lease a Notice in terms of s32 of the 1988 Act – commonly referred to as a Form AT5 – was served upon and signed by the Respondent. The lease is, therefore, a Short Assured Tenancy in terms of the 1988 Act;
- c) After sundry procedure, the Landlord was liquidated and the Applicants were appointed as receivers of the landlords;
- d) The receivers thereafter assumed the position of landlord in relation to the Property;
- e) The receivers determined that it was necessary to sell the property to ingather funds to satisfy their obligations as receivers and, therefore, instructed Solicitors to seek an order for the eviction of the Respondent from the Property;
- f) A Notice to Quit and a Notice in terms of s33 of the 1988 Act were served upon the Respondent;
- g) A Notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the Local Authority;
- h) After the expiry of the period of notice in the Notice to Quit and the Notice in terms of s33 of the 1988 Act the Applicants presented an Application to the Tribunal seeking an Order for Eviction of the Respondent;
- i) The Respondent did not engage in the tribunal proceedings and, as a result, did not provide any information to suggest it would not be reasonable to grant an order for eviction;
- j) On the basis of the information available, it is reasonable to grant an order for eviction;

## **REASONS FOR DECISION**

12. In relation to the requirements for a order for eviction to be granted, the necessary notices had been served upon the Respondent and the Local Authority. In the circumstances, subject to the matter of reasonableness, the Tribunal was in a position to grant an order for Eviction.

13. In considering matter of reasonableness, the Tribunal had made enquiry of the Applicant's agents in relation to relevant factors. The Tribunal, however, was not provided with any information to suggest that it would be anything

other than reasonable to grant the order. It was pointed out by the Agents for the Applicant that there had been a lack of engagement by the Respondent and it was noted by the Tribunal that the Respondent had not lodged any submissions with the Tribunal and had not participated in the Case Management Discussion;

14. In the circumstances, in the absence of any information to suggest otherwise, the Tribunal concluded that it was reasonable to grant an order for eviction to enable the receivers to comply with their statutory duty to ingather funds on behalf of the liquidated company.

## **DECISION**

The Tribunal grants order to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property at 13 Central Avenue, Kinloss, Moray, IV36 3XU and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

Order not to be executed prior to 12 noon on 28 November 2022

## **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.**

# Virgil Crawford

21 October 2022

---

**Legal Member/Chair**

---

**Date**